

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

SUFFOLK, SS

NO. 2015-P-0593

CLIFFORD E. GEORGE
Plaintiff/Appellant

V.

JACQUELYN A. GEORGE
Defendant/Appellee

ON APPEAL FROM THE SUFFOLK PROBATE COURT

BRIEF AND RECORD APPENDIX
OF THE PLAINTIFF-APPELLANT
CLIFFORD E. GEORGE
and
December 9, 2014 Hearing Transcript

Brian J. Kelly
BBO#559594
Kelly & Associates, P.C.
21 McGrath Highway
Suite 206
Quincy, MA 02169
Tel: (617) 770-0005
bkelly@kellyappellatelaw.com

TABLE OF CONTENTS

TABLE OF CONTENTS	I
TABLE OF AUTHORITIES	IV
I. STATEMENT OF THE ISSUE	1
Whether the probate judge erred in denying Husband's request to terminate alimony pursuant to M.G.L. c.208, §49, on the basis that alimony deviation was warranted, where said judgment constituted an abuse of discretion by the trial judge and was plainly wrong, because it was based on a) unsubstantiated allegations made by Wife, b) parole evidence, which was advanced by Wife contrary to the integration clause written into the Separation Agreement itself; c) a general premise, which, if allowed to stand, would completely defeat every claim for alimony termination pursuant to the Alimony Reform Act, as applied to divorce judgments entered prior to its enactment; and d) a specific premise that Wife, as recipient spouse, had originally bargained for a shorter alimony period in exchange for her taking less in property division, which was both incorrect and logically flawed?	1
II. STATEMENT OF THE CASE	1
III. STATEMENT OF THE FACTS	7
A. COMPLAINT FOR MODIFICATION	12
B. PRE-TRIAL CONFERENCE	13
1. HUSBAND'S POSITION IN PRETRIAL MEMORANDUM (R.31-35)	13
Health Insurance Issue	13
Refinance of Mortgage on Former Marital Home Issue	14
Termination of Alimony Issue	15

2. WIFE'S POSITION IN PRETRIAL MEMORANDUM (R.36-43)	15
C. TEMPORARY ORDERS ISSUED BY TRIAL COURT.....	16
D. TERMINATION OF ALIMONY ISSUE.....	17
1. HUSBAND'S MEMORANDUM OF LAW (R.47-54)	17
2. WIFE'S MEMORANDUM OF LAW (R.65-80;IR.1-22) ...	19
D. MODIFICATION JUDGMENT (September 16, 2014) ...	21
E. MOTION FOR ATTORNEY'S FEES AND COSTS.....	24
IV. ARGUMENT	25

The trial court's Modification Judgment, denying Husband's request to terminate alimony pursuant to M.G.L. c.208, §49, on the basis that deviation was warranted, constituted an abuse of discretion by the trial judge and was plainly wrong, because it was based on a) unsubstantiated allegations made by Wife, b) parole evidence, which was advanced by Wife contrary to the integration clause written into the Separation Agreement itself; c) a general premise, which, if allowed to stand, would completely defeat every claim for alimony termination, pursuant to the Alimony Reform Act, as applied to divorce judgments entered prior to its enactment; and, d) a specific premise, that Wife, as recipient spouse, had originally bargained for a shorter alimony period in exchange for her taking less in property division, which was both incorrect and logically flawed. 25

a. Judgment Not Substantiated By Any 28	Evidence
b. Wife's Allegations Should Have Been Barred by the Parole Evidence Rule, Especially in Light of the Integration Clause in the Separation Agreement.	29
Integration Clause and Parole Evidence Rule....	29
c. Judgment Undercuts Legislative Intent of the Act 33	

d. The Court's Reliance on Wife's Premise That She "Bargained for" a Fixed Alimony Termination Date is Incorrect and is Logically Flawed.....	35
1. Wife derived no benefit from the durational alimony limit provision in the Separation Agreement.....	36
2. Wife's share of the Property Division was equal to, if not, greater than Husband's share, pursuant to the Separation Agreement.....	37
3. Wife's agreement to allow the Property Division section of Separation Agreement to survive resulted in no harm to her.....	40
V. CONCLUSION	41
ADDENDUM	44
RECORD APPENDIX	72
IMPOUNDED RECORD APPENDIX	73
TRANSCRIPT	73

TABLE OF AUTHORITIES

Cases

<i>Adams v. Adams</i> , 459 Mass. 361 (2011)	40
<i>Antonellis v. Northgate Constr. Corp.</i> , 362 Mass. 847 (1973)	30
<i>Bendetson v. Coolidge</i> , 7 Mass. App. Ct. 798 (1979)	31
<i>Berman v. Geller</i> , 325 Mass. 377 (1950)	31
<i>Boulter-Hedley v. Boulter</i> , 429 Mass. 808 (1999)	25
<i>Boxill v. Maloney</i> , 342 Mass. 399 (1961)	26
<i>Brady v. Brady</i> , 380 Mass. 480 (1980)	29
<i>Cooper v. Cooper</i> , 62 Mass. App. Ct. 130 (2004)	25, 27, 29
<i>Drapek v. Drapek</i> , 399 Mass. 240 (1987)	41
<i>Finnerty v. Reed</i> , 2 Mass. App. Ct. 846 (1974)	31
<i>Freedman v. Freedman</i> , 49 Mass. App. Ct. 519 (2000)	28
<i>Gaw v. Sappett</i> , 62 Mass. App. Ct. 405 (2004)	26
<i>Gifford v. Gifford</i> , 354 Mass. 247 (1968)	31
<i>Glackin v. Bennett</i> , 226 Mass. 316 (1917)	31
<i>Heins v. Ledis</i> , 422 Mass. 477 (1996)	41

<i>Hillery v. Hillery</i> , 342 Mass. 371 (1961)	29
<i>Holmes v. Holmes</i> , 467 Mass. 653 (2014)	18
<i>Loring Studios of Massachusetts v. Scheft</i> , 10 Mass. App. Ct. 864 (1980)	32
<i>Robert Indus., Inc. v. Spence</i> , 362 Mass. 751 (1973)	31
<i>Schuler v. Schuler</i> , 382 Mass. 366 (1981)	25
<i>Thomas v. Christensen</i> , 12 Mass. App. Ct. 169 (1981)	29, 30, 31
<i>Zeh v. Zeh</i> , 35 Mass. App. Ct. 260 (1993)	14

Statutes

G.L. c. 208, § 34	2, 14
G.L. c. 208, § 37	40, 41
G.L. c. 208, § 48	2
G.L. c. 208, § 49	passim
G.L. c. 208, § 50	2
G.L. c. 208, § 51	2
G.L. c. 208, § 52	2
G.L. c. 208, § 53	2
G.L. c. 208, § 54	2
G.L. c. 208, § 55	2

Other Authorities

The Alimony Reform Act of 2011, St. 2011, c.124, eff. Mar. 1, 2012	2, 17, 34
Restatement (Second) of Contracts § 212 (1980)	30
Restatement (Second) of Contracts §213 (1981)	31
<i>Inker, Alimony and Assignment of Property: The New Statutory Scheme in Massachusetts</i> , 10 Suffolk U.L. Rev. 1 (1975).....	41

I. STATEMENT OF THE ISSUE

Whether the probate judge erred in denying Husband's request to terminate alimony pursuant to M.G.L. c.208, §49, on the basis that alimony deviation was warranted, where said judgment constituted an abuse of discretion by the trial judge and was plainly wrong, because it was based on a) unsubstantiated allegations made by Wife, b) parole evidence, which was advanced by Wife contrary to the integration clause written into the Separation Agreement itself; c) a general premise, which, if allowed to stand, would completely defeat every claim for alimony termination pursuant to the Alimony Reform Act, as applied to divorce judgments entered prior to its enactment; and d) a specific premise that Wife, as recipient spouse, had originally bargained for a shorter alimony period in exchange for her taking less in property division, which was both incorrect and logically flawed?

II. STATEMENT OF THE CASE

On May 29, 2001, Clifford E. George (hereinafter, "Husband") filed a Complaint for Divorce against Jacquelyn A. George (hereinafter, "Wife") in the Suffolk Probate and Family Court (hereinafter, "the

court"). Record Appendix, pages 7 to 9 (hereinafter, "R.7-9").

On November 20, 2002, the parties executed a Separation Agreement (R.12-25), which the court incorporated into a Judgment of Divorce Nisi on that same day. R.11,82.

Said Agreement merged into the Judgment of Divorce and retained no independent legal significance, except that the property division provisions, referenced in Exhibit C of the Agreement, survived the Judgment, becoming binding upon the parties. R.14,82.

On September 26, 2011, Governor Deval Patrick signed into law "An Act Reforming Alimony in the Commonwealth," c.124 of the Acts of 2011, which became effective on March 1, 2012, otherwise known as The Alimony Reform Act of 2011, St. 2011, c.124, *eff.* Mar. 1, 2012, (hereinafter, "the Act").

The Act essentially amended M.G.L. c. 208 by removing existing alimony law from §34 of the statute (c.208) and placing it, in its expansive form, into eight (8) newly added sections to said statute (§§ 48-55). St. 2011, c. 124, §§ 2, 3.

The SECTIONS of the Act, which are pertinent to the case at bar are as follows:

SECTION 3. Said chapter 208 is hereby further amended by adding the following 8 sections.

. . . .

Section 49

. . . .

(b) Except upon written finding by the court that deviation beyond the time limits of this section are required in the interest of justice, if the length of the marriage is 20 years or less, general term alimony shall terminate no later than a date certain under the following durational limits:

. . . .

(3) If the length of the marriage is 15 years or less, but more than 10 years, general term alimony shall continue for not longer than 70 per cent of the number of months of the marriage.

. . . .

SECTION 4. (a) Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered before March 1, 2012 shall terminate only under judgments, under a subsequent modification or as otherwise provided for in this act.

(b) Sections 48 to 55, inclusive of said chapter 208 shall not be deemed a material change in circumstance that warrants modification of the amount of existing judgments; provided, however, that existing alimony judgments that exceed the durational limits under section 49 of said chapter 208 shall be deemed a material change of circumstance that warrant modification.

Existing alimony awards shall be deemed general term alimony. Existing alimony awards which exceed the durational limits

established in said section 49 of said chapter 208 shall be modified upon a complaint for modification without additional material change of circumstances, unless the court finds that deviation from the durational limits is warranted.

. . .

SECTION 5. Any complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the durational limits of section 49 of chapter 208 of the General Laws, may only be filed under the following time limits:

. . .

(3) Payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015.

On August 26, 2013, Husband filed a Complaint for Modification. R.26. Husband filed an Amended Complaint for Modification on September 24, 2013. R.27.¹ Said Amended Complaint for Modification raised three (3) issues, requesting 1) termination of health care insurance for Wife, 2) that Wife refinance the former marital home and remove Husband's name from the existing mortgage, and 3) termination of alimony, pursuant to the Alimony Reform Act, M.G.L. c.208, §49. R.27.

¹The amendment was to correct the city of residence for Wife, which had been filled in incorrectly in the original Complaint for Modification.

On November 12, 2013, Wife filed Defendant's Answer to Plaintiff's Complaint for Modification and Defenses. R.28-30.

On May 7, 2014, Husband filed Plaintiff's Pre-Trial Conference Memorandum. R.31-35.

On May 8, 2014, Wife filed Pre Trial Memorandum of Defendant Relative to the Plaintiff's Complaint for Modification and Her Counterclaims. R.36-43.

After a pre-trial hearing (Stahlin, J., presiding), which was held on May 8, 2014, the court issued Temporary Orders finding that there were no remaining issues in the case relating to Husband's health insurance issue and property division issue. R.44. Said Temporary Orders directed the parties to file an agreed upon statement of facts and briefs by July 10, 2014 and explained that the court would decide the remaining alimony issue on those submissions. R.44.

On July 10, 2014, the parties filed a Joint Uncontested Statement of Facts (R.45-46); Husband filed Plaintiff's Memorandum of Law (R.47-64); and Wife filed Submission of the Defendant, Jacquelyn George in Support of Her Opposition to Plaintiff's Request to Terminate Alimony. (R.65-80; and Impounded

Record Appendix, pages 1 to 22, hereinafter "IR.1-22").

On September 16, 2014, the court (Stahlin, J.) issued a Modification Judgment ruling that "There was no change of circumstances to justify a termination of alimony." R.81. Additionally, the court issued a Memorandum of Decision. R.82-86.

On September 23, 2014, Husband filed a Notice of Appeal as to the September 16, 2014 Judgment. R.87-88.

On October 16, 2014, Wife filed Defendant, Jacquelyn George's Motion for Attorney's Fees and Costs. R.89-104.

On December 9, 2014, Husband filed Plaintiff's Opposition to Defendant's Request for Attorney's Fees. R.105-110.

On December 9, 2014, the court (Stahlin, J., presiding) held a hearing as to the issue of Wife's Motion for Attorney's Fees and Costs. Transcript pages 1 to 12 (hereinafter, "Tr.1-12").

On December 9, 2014, the court issued a Supplemental Modification Judgment allowing Wife's motion for fees and costs in part. R.111. Additionally, the court issued a Memorandum of Decision. R.112-116.

On December 17, 2014, Husband filed a Second Notice of Appeal as to the court's December 9, 2014 Judgment and also renewing his Notice of Appeal as to the September 16, 2014 Judgment. R.117-118.

III. STATEMENT OF THE FACTS

The matter arose over a Divorce and a Complaint for Modification filed by Husband.

The Parties were married on June 24, 1989 in Winthrop, Massachusetts and were divorced on November 20, 2002. R.45. There are no minor or dependent children of the marriage. *Id.*

The Judgment of Divorce Nisi, dated November 20, 2002 incorporated a Separation Agreement, which was executed by the Parties on that same day. R.82. Said Separation Agreement **merged** into the Judgment of Divorce and retained no independent legal significance, **except** that the **Division of Property** provisions in Exhibit C of the Separation Agreement **survived** the Judgment and thereafter became binding upon the Parties. R.14,82.

The pertinent sections of the Separation Agreement are as follows,

6. The provisions of the Agreement may not be changed or modified except by a written instrument signed and acknowledged in duplicate by the Husband and the Wife, or by an order or Judgment of Modification entered by the Suffolk Probate and Family Court.

7. A copy of this Agreement shall be submitted to the Court and incorporated in a Judgment of Divorce and shall merge in the Judgment of Divorce. This Agreement shall retain no independent legal significance, except that the property division provisions referenced in Exhibit C shall survive the Judgment and be thereafter binding upon the parties.

8. The Husband and the Wife acknowledge that this Agreement contains the entire Agreement between the parties hereto and that there are no agreements, promises, terms, conditions or understandings and no representation or inducements leading to the execution hereof, expressed or implied, other than those herein set forth and that no oral statement or prior written matter extrinsic to this Agreement shall have any force or effect. . . .

R.14.

. . . .

11. The parties acknowledge that they are entering into this Agreement freely and voluntarily; that they have ascertained and weighed all facts and circumstances likely to influence their judgment herein; that they have had an opportunity to seek legal advice independently of each other; and that they clearly understand and assent to all the provisions hereof.

R.15.

. . . .

EXHIBIT 'A'

ALIMONY

1. Commencing on the first day of the month following the execution of this Agreement, and on the first of each month thereafter, the Husband shall pay to the Wife as alimony, for her support and maintenance, the sum of One Thousand Eight Hundred (\$1,800.00) Dollars per month. The payments called for by this paragraph and the Husband's obligation to pay alimony to the Wife shall terminate upon the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026.

2. All alimony payments required by Paragraph 1 above shall be includible in income by the Wife and deductible from income by the Husband on his or her federal and state income tax return.

3. In the event that the Wife receives a gift or inheritance which is in excess of Twenty Five Thousand (\$25,000.00) Dollars, she shall, within 7 days of her receipt thereof, notify the Husband of the amount she has received.

R.18.

EXHIBIT 'C'

DIVISION OF PROPERTY

REAL PROPERTY

1. (a) The Husband and Wife own the land and building located at 15 Short Street, Winthrop, Massachusetts (the "Premises"). The parties represent that they have not encumbered the Premises except by a first mortgage of approximately One Hundred Sixteen Thousand (\$116,000.00) Dollars.

(b) Commencing on the first day of the month following the date of the execution of [this Agreement,] Wife shall be responsible for and shall pay all expenses in connection with the Premises, including but not limited to: principle and interest on the existing first mortgage, home owner's insurance and real estate taxes, utilities and maintenance and repair.

(c) Simultaneously with the execution of this Agreement, the Husband shall execute and deliver a quitclaim deed to the Wife conveying all of his right, title and interest in and to the Premises to her, subject to the mortgage and home equity line;

PERSONAL PROPERTY

2. The Husband hereby releases to the Wife any right, title or interest he may have in the following property which is to be retained and owned exclusively by the Wife:

- (a) The account standing in her name at Fleet Bank;
- (b) The furniture and furnishings in the Premises;
- (c) The automobile in the Wife's name.

4.² The Wife hereby releases to the Husband any right, title or interest she may have in the following property which is to be retained and owned exclusively by the Husband:

- (a) Two timeshares at Disney World owned with his siblings;
- (b) The personal property now in his possession;

²This exhibit of the Separation Agreement did not have a No. 3 paragraph.

- (c) His Individual Retirement Account at Fidelity;
- (d) His interest in Northeast Electric Retirement Plan;
- (e) His interest in Northeast Electric, Inc.
- (f) His checking and savings account at Fleet Bank;
- (g) His stock in Fidelity;
- (h) The cash surrender value in three life insurance policies in his name with MFA and MML, subject to provisions in Exhibit E below;
- (i) The Mako 25 boat.

5. Within six (6) months from the date of execution of this Agreement, the Husband shall pay to the Wife the sum of Three Thousand Five Hundred (\$3,500.00) Dollars to effectuate an equitable division of the assets.

R.21-22.

. . .

EXHIBIT 'E'

LIFE INSURANCE

1. The Husband shall maintain in full force and effect the employment-related life insurance on his life having a death benefit no less than Three Hundred Thousand (\$300,000.00) Dollars, the proceeds of which shall be payable to the Wife. The Husband's obligation to maintain said life insurance shall terminate upon the Wife's death, the

Husband's death, the Wife's remarriage or July 30, 2026.

2. Upon a request by the Wife, the Husband shall provide evidence annually that the life insurance policy(s) is in full force and effect.

R.24.

A. COMPLAINT FOR MODIFICATION

On August 26, 2013, as amended on September 24, 2013, Husband filed a Complaint for Modification, requesting that the November 20, 2002 Divorce Judgment be modified by:

- 1) "Allowing the Plaintiff [Husband] to terminate coverage of health insurance on behalf of the Defendant [Wife];"
- 2) "ordering that the Defendant [Wife] refinance and remove the Plaintiff's [Husband's] name from the mortgage for the former marital home,"
- 3) "ordering a termination of alimony," . . .

R.26,27.

The grounds upon which Husband relied for the requested modification were the following changes of circumstances that had occurred since the date of the Divorce Judgment:

[1] The cost of health insurance has increased over 100% of the original cost, and the Defendant [Wife] has obtained a Medicare policy;

[2] the Plaintiff's [Husband's] ability to secure credit on behalf of his business has been negatively impacted by Wife's refusal to refinance the mortgage in her name, and her refusal to refinance [] to obtain a lower interest rate; and

[3] pursuant to the term limits of the Alimony Reform Act, MGL c.208 s.49, the term of alimony has now expired due to the length of the parties' marriage. Also, the Plaintiff [Husband] has remarried and has a child, and the cost of alimony and health insurance [coverage] have become prohibitively expensive.

R.26,27.

On November 5, 2013, Wife filed Defendant's Answer to Plaintiff's Complaint for Modifications and Defenses. R.28-30.

B. PRE-TRIAL CONFERENCE

Both parties submitted Pre-Trial Memorandums to the court prior to the actual conference, which took place on May 8, 2014. R.31-35;R.36-43.

1. HUSBAND'S POSITION IN PRETRIAL MEMORANDUM (R.31-35)

Health Insurance Issue

Husband maintained that since the time of the Divorce Judgment, the health care premium that he paid for Wife had increased approximately 400% (from just over \$100.00 per month at the time of the divorce to

\$485.00 per month at time of the Complaint for Modification). R.32.

Moreover, because Wife had health insurance through Medicare Part A (hospital insurance) and Part B (health insurance), plus she received Supplemental Security Income, and, most especially, since the divorce, Wife has obtained and received limited benefits through Mass Health, Husband should no longer be forced to provide health insurance for Wife, given that said plan was a secondary plan only. R.32-33. Husband relied upon, M.G.L. c.208, §34, and *Zeh v. Zeh*, 35 Mass. App. Ct. 260, 267 (1993), as precedent for these arguments. R.32.

Refinance of Mortgage on Former Marital Home Issue

a) Husband informed the court that since he deeded his interest in the Premises to Wife, per the Divorce Judgment, Wife, who was to take over the mortgage payment, missed several payments, prompting the parties to agree that Husband would pay the mortgage out of his alimony payments and pay the remainder to Wife. R.33.

b) Husband also informed the court that, in recent years, the company that he owned experienced a significant downturn, which required him to try to

acquire an extensive amount of equipment to meet the industry demands. Because his name was still on the mortgage (despite holding no interest in the Premises), his ability to secure credit to purchase said equipment was negatively impacted, which, in turn, was negatively impacting his business. *Id.*

c) Husband further pointed out to the court that if Wife refinanced the mortgage and obtained a lower interest rate by extending the loan, she would benefit by obtaining a lower monthly payment. *Id.*

Termination of Alimony Issue

Where the court chose not to deal with this issue at the Pre-Trial Conference, but rather requested further briefing on said issue, Husband's position will be addressed in greater detail later in this brief, *infra* in Section D.1.

2. WIFE'S POSITION IN PRETRIAL MEMORANDUM (R.36-43)

Wife did not address each of Husband's grounds individually, but rather maintained that Husband had not demonstrated a substantial change in circumstances warranting any of his requested modifications. R.41.

Wife asserted that the only change in circumstances was that Wife's health deteriorated, while Husband's assets and income increased. R.41-42.

In keeping with the above subsection, where the court chose not to deal with the termination of alimony issue at the Pre-Trial Conference, but rather requested further briefing on said issue, Wife's position will be addressed in greater detail later in this brief, *infra* in Section D.2.

C. TEMPORARY ORDERS ISSUED BY TRIAL COURT

On May 8, 2014, following the Pre-Trial Conference, the court issued Temporary Orders stating that there was no remaining issue in the case relating to either the health insurance or the property division. R.44. The court gave no Memorandum of Decision as to the Temporary Orders.³

The Temporary Orders further called for both parties to submit an agreed upon statement of facts and briefs as to the remaining alimony issue and that the court would decide the issue on the submissions without any further court hearings. R.44.

³ While the court issued no written explanation at the time of the Temporary Orders, the court subsequently did reveal for the first time in writing its rationale, via a Memorandum of Decision (R.112-115), which accompanied its December 9, 2014 Supplemental Judgment (R.111), relative to its allowance of Wife's motion for attorney's fees.

The court found both the health insurance and the property division issues to have been "wholly insubstantial, frivolous and not advanced in good faith." R.114.

D. TERMINATION OF ALIMONY ISSUE

1. HUSBAND'S MEMORANDUM OF LAW (R.47-54)

In his July 10, 2014 Memorandum of Law, Husband argued that he was entitled to have the court terminate his alimony obligation to Wife, pursuant to the Alimony Reform Act (hereinafter, "the Act"), which applies retroactively to divorce judgments issued prior to the enactment of the Act (March 1, 2012), as to the durational limits on alimony, as set forth in the Act. R.48.

As to how the Act would specifically apply to this case, where the parties were married for between ten and fifteen years, alimony would continue for not longer than 70% of the number of months that the parties were married. *Id.* According to Husband's calculations, the alimony should have ended on March 20, 2012. *Id.*

Husband acknowledged to the court that the Act did provide for a deviation from the durational limits but only "upon a written finding by the court that deviation beyond the limits of this section are required in the interests of justice". M.G.L. c. 208, §49(b); R.49.

Husband argued that while Wife had claimed the need to continue alimony based on her declining health, Wife's health concerns existed during the marriage and were exacerbated by Wife's addiction to alcohol, pain pills, and other drugs, which was the case throughout the marriage. *Id.*

Husband further argued that regardless of Wife's health issues, she had substantial resources at her disposal, including \$40,000.00 in her bank account; over \$200,000.00 in equity in the former marital home; an increase in her SSDI income (from approximately \$680 per month at the time of divorce to approximately \$1,200 per month); an expected substantial inheritance from her father; the fact that she carried only \$750 in debt; plus having been in a relationship with the same man for the past nine (9) years, from whom she had just received a diamond anniversary ring. *Id.*

Husband also pointed out to the court that, given that his alimony obligation should have ended on March 20, 2012, he had already overpaid Wife by \$43,200.00. *Id.*

Husband, citing, *Holmes v. Holmes*, 467 Mass. 653, 661 (2014), further argued that, while ordinarily, any retroactive complaint for modification under the Act

could not be brought prior to March 1, 2015, said restriction only applied where the complaint for modification was being brought solely on the durational limits under the Act. R.49-50. Husband thereby asserted that where the Complaint for Modification brought by Husband in the instant case raised multiple issues, his request for alimony relief was properly before the court. R.50.

Husband finally stated that if he were obligated to wait until the March 1, 2015 date to file a complaint for modification as to the alimony termination, he would then have incurred an alimony overpayment in excess of \$64,800.00. *Id.*

2. WIFE'S MEMORANDUM OF LAW (R.65-80;IR.1-22)

Wife argued that Husband's Complaint for Modification was premature and could not be brought until the March 1, 2015 date, because the modification of alimony was brought solely "based on the durational limits of section 49 of the Alimony Reform Act." R.68. Wife further asserted that because the other issues brought in Husband's Complaint for Modification had nothing to do with alimony, Husband could not raise the section 49 claim. *Id.*

Wife further argued that because the court denied relief outright as to the other issues in Husband's Complaint for Modification, Husband was then left with the sole modification issue of durational limits on alimony, which would be precluded until the March 1, 2015 date. R.68-69.

Wife argued that, even if the court could take up the issue at this time, it should not terminate her alimony in the interest of justice, claiming Wife's declining health and Husband's increased assets and income and further claiming that Wife could not otherwise pay her mortgage. R.69-70.

Wife also asserted that, at the time of the execution of the Separation Agreement, the parties agreed to set the alimony payment for a fixed period of time, in exchange for Wife waiving her right to significant assets owned by Husband, alleging that Husband retained almost all assets with the exception of the marital home.⁴ R.70.

Wife claimed that the parties specifically contemplated the fixed date of alimony termination to

⁴Wife provided no evidentiary support for this allegation.

coincide with the maturity of the mortgage on the former marital home.⁵ *Id.*

No testimony was taken by the court; no supportive affidavits were filed by either party. Only a Joint Uncontested Statement of Facts was filed with the court. R.45-46.

D. MODIFICATION JUDGMENT (September 16, 2014)

Following the submission of the memorandums by the parties, the court issued a Modification Judgment on September 16, 2014 (R.81), along with a Memorandum of Judgment, issued that same day (R.82-86).

The court denied Husband's request for termination of alimony based on a finding of "no change of circumstances." R.81.

In its Memorandum of Decision, the court analyzed certain sections of the Separation Agreement and summarized and cited pertinent sections of the Act. R.82-84.

In calculating how the act would apply to the instant case, based on the length of the parties' marriage, the court actually determined that, if applied, Husband's obligation would have actually

⁵Wife provided no evidentiary support for this allegation.

ended on April 23, 2011 (R.84-85), rather than the March 20, 2012 date that Husband had calculated in his memorandum (R.48.)

As to whether the court deemed Husband's Complaint for Modification as being brought solely on the durational limits of alimony under the Act, and thus premature, the court merely recited the law, without giving a definitive ruling.⁶ R.85.

Instead, the court addressed the merits of alimony termination issue and ruled as follows,

In the instant case, the divorce judgment, as agreed by the parties, does have a durational limit which is "the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026." That limit was part of a bargained for agreement which included a division of property which survives the judgment and cannot be modified absent countervailing equities. Had the former wife known that, regardless of the language of the Separation Agreement, the alimony would in fact end on a date years earlier than

⁶While the trial court did not address the issue as to timeliness of Husband's Complaint for Modification on the alimony termination at the time of the September 16, 2014 Judgment, the court subsequently did reveal for the first time in writing its decision, via its Memorandum of Decision (R.112-115), which accompanied its December 9, 2014 Supplemental Judgment (R.111), relative to its allowance of Wife's motion for attorney's fees.

The court found that Husband's modification request was "based solely on the change in the statute" (R.115), which would mean that it was brought prematurely. M.G.L. c.208, §49.

bargained for, she would likely have insisted on different property division terms.

In a case like the present one where the recipient spouse bargained for a durational limit contained in the parties' agreement and agreed to surviving property division terms a part of that bargain, deviation from the new statutory durational limit is warranted, and the bargained for durational limits should stand.

The Joint Uncontested Statement of Facts filed by the parties does not otherwise show any material change of circumstances sufficient to justify a modification. A judgment shall issue accordingly.

R.86.

Despite the arguments advanced by Wife in her Memorandum of Law (R.65-70), the court did not provide any written rationale for any deviation for the alimony termination based on any issue as to Wife's alleged declining health or Husband's present or increasing income and/or assets. R.81-86.

NOTE #1: Despite filing a Notice of Appeal (R.87-88) as to the September 16, 2014 Modification Judgment (R.81-86), Husband will not be appealing that portion of the judgment relating to the prematurity of the claim, but rather is only appealing the court's rationalization for finding that deviation from the Act was warranted (R.86).

E. MOTION FOR ATTORNEY'S FEES AND COSTS

On October 16, 2014, Wife filed a Motion for Attorney's Fees and Costs citing the rulings by the court in favor of Wife. R. 89-104.

On December 9, 2014, Husband filed Plaintiff's Opposition to Defendant's Request for Attorney's Fees. R.105-110.

A hearing on said motion was held on December 9, 2014. Tr.1-12.

On December 9, 2014, following said hearing, the court issued a Supplemental Modification Judgment, allowing Wife's motion in part. R.111,116.

In the accompanying Memorandum of Decision, the court gave its rationalization as to the partial allowance of the motion for fees. R.112-115.

NOTE #2: Despite filing a Notice of Appeal (R.117-118) as to the court's December 9, 2014 Supplemental Modification Judgment (R.111-116), Husband will not be appealing said Supplemental Modification Judgment, but rather will only appeal the court's September 16, 2014 Modification Judgment and only as to the issue set forth in NOTE #1, *supra*.

IV. ARGUMENT

The trial court's Modification Judgment, denying Husband's request to terminate alimony pursuant to M.G.L. c.208, §49, on the basis that deviation was warranted, constituted an abuse of discretion by the trial judge and was plainly wrong, because it was based on a) unsubstantiated allegations made by Wife, b) parole evidence, which was advanced by Wife contrary to the integration clause written into the Separation Agreement itself; c) a general premise, which, if allowed to stand, would completely defeat every claim for alimony termination, pursuant to the Alimony Reform Act, as applied to divorce judgments entered prior to its enactment; and, d) a specific premise, that Wife, as recipient spouse, had originally bargained for a shorter alimony period in exchange for her taking less in property division, which was both incorrect and logically flawed.

Husband recognizes that a "probate judge enjoys considerable discretion." *Cooper v. Cooper*, 62 Mass. App. Ct. 130, 134 (2004), quoting, *Schuler v. Schuler*, 382 Mass. 366, 368 (1981). However, the deferential standard to a judge's decision "is not without limit." *Cooper, supra*, quoting, *Boulter-Hedley v. Boulter*, 429 Mass. 808, 811 (1999).

In cases where the matter before the probate court was "heard upon statements of counsel," such as the one at bar, the Supreme Judicial Court has held that "where everything before the probate judge is before [the appellate court] and where [the probate judge] did not rely on any oral testimony, [the

appellate court is] in the same position as [the probate judge], and [the appellate court has] the same power to determine facts and to exercise discretion." *Boxill v. Maloney*, 342 Mass. 399, 401 (1961). Contrast, *Gaw v. Sappett*, 62 Mass. App. Ct. 405, 409 (2004) (appellate court gives particular deference to trial judge if judge had first-hand view of presentation of evidence and can assess credibility).

No such presentation of the evidence occurred in this case at the lower court's request, such that the lower court had no first-hand view of the parties from which to assess credibility. Thus, this Court is in the same position, and possesses the same power to determine facts and exercise discretion, as the lower court.

In denying Husband's request to terminate alimony pursuant to M.G.L. c. 208, §49, the court invoked that portion of §49(b), which allows a court to find "that deviation from the durational limits is warranted."

In so ruling, the court gave both a specific and a general rationalization for deviating from the statute. R.86.

As specifically applied to the instant case, the court found that the parties had bargained for a

durational limit on alimony in exchange for a property division, which survived and could not be modified. *Id.*

On a general front, the court held that if Wife had known, at the time of the Separation Agreement that her alimony would end at an earlier time than was bargained for, "she would likely have insisted on different property division terms." *Id.*

Yet, the court abused its discretion by such findings and was plainly wrong, given that its rationale a) was not based on any substantiated evidence, b) was based on inadmissible parole evidence, which was contrary to the integration clause of the Separation Agreement itself, c) as to the general premise, would universally defeat the Legislative intent of the Act, if allowed to stand, and d) as to the specific premise, was incorrect and logically flawed. *Cooper*, 62 Mass. App. Ct. at 134.

In *Cooper*, this Court held that, "Error of law apparent on the record, such as the failure of a judge's findings to support the judge's action or findings that have no support in evidence, would constitute an abuse of discretion." *Id.*, quoting

Freedman v. Freedman, 49 Mass. App. Ct. 519, 521 (2000). Such error is apparent here.

a. Judgment Not Substantiated By Any Evidence

The judge's acceptance of representations by counsel on behalf of Wife, in her pretrial memorandum (R.65-80;IR.1-22) that Husband had "agreed to a set alimony payment for a FIXED period of time and in exchange, for waivers of significant assets owned by the Plaintiff [Husband]," and that "[t]he parties . . . clearly contemplated a swap of assets and entangled it into an alimony award" (R.69-70), was not based on any evidence presented to the court, nor was it based on any testimony or affidavit, nor any writing contained in the Separation Agreement itself (R.12-25).

The only documentation filed with the court, which could be considered as evidence, was the Joint Uncontested Statement of Facts, which contained nothing to substantiate Wife's allegations as to what Husband or the parties, collectively, were contemplating at the time they executed the Separation Agreement. R.45-46.

For the judge to find that the parties "bargained for" a durational limit to Husband's alimony

obligation in exchange for "a division of property which survives the judgment" based purely on Wife's speculative and unsubstantiated assertions, completely devoid of factual evidence, was an abuse of discretion and was plainly wrong. *Cooper*, 62 Mass. App. Ct. at 134. See, *Brady v. Brady*, 380 Mass. 480, 488 (1980), citing, *Hillery v. Hillery*, 342 Mass. 371, 375 (1961) (an order not supported by the evidence is plainly wrong).

b. Wife's Allegations Should Have Been Barred by the Parole Evidence Rule, Especially in Light of the Integration Clause in the Separation Agreement

Integration Clause and Parole Evidence Rule

Notwithstanding that the court rendered its judgment without any supporting evidence, even had the court somehow accepted the statements of counsel in Wife's memorandum of law as evidence, said judgment was plainly wrong in that any such "evidence," even an affidavit by Wife (of which there was none) would be inadmissible because the Separation Agreement contained an integration clause. See, *Thomas v. Christensen*, 12 Mass. App. Ct. 169, 176 (1981).

Paragraph 8 of the general terms section of the Separation Agreement, in the instant case,

acknowledged that said Agreement was the entirety of the parties' agreement, specifically stating,

8. The Husband and the Wife acknowledge that this Agreement **contains the entire Agreement** between the parties hereto and that **there are no agreements, promises, terms, conditions or understandings and no representation or inducements** leading to the execution hereof, expressed or implied, **other than those herein set forth** and that **no oral statement or prior written matter extrinsic to this Agreement** shall have any force or effect. . . .

R.14 (emphasis added).

In *Thomas*, this Court reversed a trial judge's decision, which had accepted the defendant's affidavit, which recited his understanding as to the contract in question. 12 Mass. App. Ct. at 178.

The *Thomas* court held that,

An affidavit filed by [the defendant] containing a statement set forth in the margin as to his understanding, does not help the defendants' position. To the extent that the statement shows the [defendant's] own undisclosed and unmanifested intent, it is not relevant. See Restatement (Second) of Contracts § 212, Comment a (1980). Moreover, even if the affidavit can be taken as bearing on the **parties'** intent, according any weight to such intent would be an "impossible strain" on the words used. Compare *Antonellis v. Northgate Constr. Corp.*, 362 Mass. [847], 851 [(1973)]. Since the parole evidence rule bars giving effect to any agreement not contained in the integrated writings, [the defendant's] affidavit may not be used to show that an agreement was reached on an additional provision not contained in the documents.

Robert Indus., Inc. v. Spence, 362 Mass. [751], 756 [(1973)]. *Bendetson v. Coolidge*, 7 Mass. App. Ct. 798, 802-803 (1979). Restatement (Second) of Contracts §213(2) (1981).

Id. at 176 (*emphasis in original*).

Likewise, in *Bendetson*, 7 Mass. App. Ct. at 802-803, this Court "faced with an integration clause," refused to apply the parole evidence rule in a mechanical fashion as to the subject of an agreement, stating,

If every instance of not treating directly with a subject in an agreement (especially when so doing has a legal consequence ...) were the occasion for piercing an integration clause, the utility of the art of legal draftsmanship will have suffered a serious setback. Where the writing shows on its face that it is the entire agreement of the parties and "comprises all that is necessary to constitute a contract, it is presumed that they have placed the terms of their bargain in this form to prevent misunderstanding and dispute, intending it to be a complete and final statement of the whole transaction." *Glackin v. Bennett*, 226 Mass. 316, 319-320 (1917). *Berman v. Geller*, 325 Mass. 377, 379-390 (1950). *Gifford v. Gifford*, 354 Mass. 247, 249 (1968). *Finnerty v. Reed*, 2 Mass. App. Ct. 846, 847 (1974).

Moreover, in the instant case, Wife makes no claims of mutual mistake or fraud in the inducement relative to the Separation Agreement. R.65-70. Nor did the court find any such infirmity with the document. R.82-86.

Additionally, the court found no ambiguity with the terms included therein, nor could Wife make such an argument under the guise of advancing an explanation for the provisions in the Separation Agreement. See, *Loring Studios of Massachusetts v. Scheft*, 10 Mass. App. Ct. 864, 865 (1980).

In *Loring Studios*, this Court reversed a trial court's decision because the lower court judge improperly accepted parole evidence where he had originally found that a lease contract was ambiguous because there was no indication as to why the challenging party would undertake a certain obligation unless that party expected to receive a full benefit of its expenditure. *Id.* at 864-865.

In so reversing the trial court's judgment, the *Loring Studios* court held that,

The fact that the lease [contract] contained no recital of explanation of this provision does not render it ambiguous.

Id. at 865.

The trial court, in the instant case, was plainly wrong and abused its discretion in failing to recognize that not only were Wife's unsubstantiated allegations inadmissible under general contract law, but also were contrary to the clear and unambiguous

clause contained in the Agreement itself, disclaiming any such "understanding" or "conditions" that were not contained within the four corners of the Agreement.

R.14.

c. Judgment Undercuts Legislative Intent of the Act

In addition to the trial court basing its decision on Wife's phantom "bargained for" agreement allegations, the trial court honed in on the existing durational limit in the Separation Agreement and reasoned that,

Had the former wife known that, regardless of the language of the Separation Agreement, the alimony would in fact end on a date years earlier than bargained for, she would likely have insisted on different property division terms.

R.86.

Such rationale is not only contrary to the Legislative intent of the Act, but, if allowed to stand, would grant a complete defense against any and all payor spouses in pre-March 1, 2012 divorce cases who are attempting to assert their rights under Section 49.

Given that the Legislature enacted the additions to the existing alimony law and specifically incorporated a retroactivity clause as to durational

limits on alimony, Husband hereby asserts that the Legislature was well aware that the ramifications of such a law would, indeed, have been a surprise to many recipient spouses. St. 2011, c.124, § 4(b). It would not be a stretch of the imagination to assume that recognizing such ramifications was the reason the Legislature set up a grace period, before which a payor spouse ordinarily had to wait to apply for alimony termination. St. 2011, c.124, § 5(3).

For the court, in the instant case, to thwart the Legislative intent of the Act by simply reasoning that any recipient spouse to a divorce judgment prior to March 1, 2012 would have insisted on different terms in a divorce agreement, had they been clairvoyant as to the potential early termination of their alimony support, would completely undermine the new law and render the Act moot, whereby every recipient spouse would completely obviate the impact of the Act on any given pre-2012 divorce, by simply making this same argument.

The instant case is no different and, if anything, would have been less harsh than Separation Agreements or Divorce Judgments that did not contain a durational limit. Here, Wife finds herself in a

situation where her alimony, which was scheduled to end in 2026 can be terminated twelve (12) years earlier than she had anticipated. Unquestionably, there exist other recipient spouses from pre-2012 divorce judgments, with no alimony term limits, who were under the impression that their alimony support would go on for many years past 2026 and, therefore, their alimony losses would be even more severe and more of a reason that, had they known the future of the law, they would also have insisted on different terms in their Separation or Divorce Agreements.

The fact that the Separation Agreement had its own durational limit in this case would mean less of a hardship on Wife, in the instant case, than it would be for the majority of other recipient spouse under the Act.

d. The Court's Reliance on Wife's Premise That She "Bargained for" a Fixed Alimony Termination Date is Incorrect and is Logically Flawed.

Wife's assertions as to her "bargaining for" a fixed alimony termination date in exchange for Husband receiving more in property division is cut from whole cloth, in that the premise, in and of itself, is nonsensical, and would never have been part of the divorce negotiations.

1. Wife derived no benefit from the durational alimony limit provision in the Separation Agreement.

Given that the divorce, in the instant case, occurred ten (10) years before the enactment of the new Act, when no statutory alimony limitations existed, the parties, without the durational limits drafted into their Separation Agreement, would naturally have anticipated that, barring the death of either party or remarriage of Wife, Husband's alimony obligations would continue indefinitely. Where both parties were only in their 30s at the time of the divorce⁷, Husband could have been obligated to pay alimony to Wife for 30 plus years, instead of the 24 years that they drafted into their Separation Agreement. Thus, it only makes logical sense that the fixed term of the alimony in the Separation Agreement, if bargained for at all, would have been done for the benefit of Husband.⁸ That being the case, the only way for Husband to have gotten Wife to accept an early termination of alimony would have been for him to have conceded in some other area of the Agreement (either

⁷ Husband's d/o/b: 10/14/67; Wife's d/o/b: 5/18/67 R.9.

⁸ Husband by no means asserts or implies that there was any such "bargaining."

paying a larger amount of monthly alimony or retaining less property).

Essentially what Wife argued to the court is that she agreed to take less in the property division in exchange for Husband being able to terminate her alimony sooner. The argument simply defies logic.

2. Wife's share of the Property Division was equal to, if not, greater than Husband's share, pursuant to the Separation Agreement.

Wife's Memorandum of Law is factually deceptive and misleading: she downplayed the value of the property that she retained, while misdirecting the court into looking to the number of categories of property retained by Husband, rather than the actual values of the property retained by each party. R.69. (Wife claimed, "the parties agreed to alimony payments as well as a division of assets wherein Plaintiff [Husband] retained almost all assets with the exception of the marital home.") In truth, the marital home was, in and of itself, the most valuable asset owned by the parties. IR.4-6. The equity in the home alone was of greater value than all of the property that Husband collectively retained. *Id.*

In an attempt to further tip the scales to make it appear as though Husband retained the lion's share

of the property, Wife, in both her Pretrial Memorandum (R.38) and in her Memorandum of Law (R.67), added an extra item, which was not included in the actual Separation Agreement ("*j. Real Property located at 1200 Salem Street Unit 144, with a fair market value of \$350,000.00.*") Not only is item "j." not listed in the Separation Agreement (R.21-22), but the description was misleading. Wife's extra entry specifically described the property as having a fair market value of \$350,000.00 (R.38,67) (something that is not specified in any other property listed in the Separation Agreement (R.21-22)), when the equity was only \$80,000.00 (IR.4), a fact Husband asserts should have been fully disclosed to the court.

Rather than blindly accepting Wife's bald assertions as to the comparative value of the property division, Husband sets forth *infra* a comparison of the actual values, of the property division retained by each party in the Separation Agreement, using the figures that were presented to the court in his Financial Statement at the time of the divorce (IR.4-6) and which was reviewed by the court, prior to accepting the Separation Agreement and incorporating same into the 2002 Divorce Judgment.

Based on the available figures, the following were the actual values that had been presented to the court, along the Separation Agreement (IR.4-6):

Husband's Retained Property

Disney Timeshare (w/siblings)	\$ 4,000.00 ⁹
Second Home (Equity)	\$ 80,000.00
IRA (Fidelity)	\$ 5,505.00
N.E. Elec. - Defined Benefits Plan	\$ 0.00
N.E. Elec. - Defined Contribution Plan	\$ 0.00
Interest in N.E. Electric	Not Provided
Checking Account (Fleet)	\$ 2,000.00
Savings Account (Fleet)	\$ 4,000.00
Stocks (Fidelity)	\$ 3,540.00
Life Insurance (Cash Value)	\$ 5,000.00
Mako 25 Boat (Equity)	\$ 0.00
TOTAL	\$104,045.00+

Wife's Retained Property

Marital Home (Equity)	\$125,000.00
Bank Account	Not Provided
Furnishings & Furniture (Home)	Not Provided
Automobile	Not Provided
TOTAL	\$125,000.00+

In addition to the above-listed asset values, the Separation Agreement also called for Husband to pay Wife an additional **\$3,500.00** "to effectuate an equitable division of the assets." R.22.

⁹ IR.20.

Based on those comparisons alone, it is inconceivable how the trial court could have believed Wife's allegations that she "bargained for" less in the division of property.

Given that, in actuality, Wife retained a greater amount of the assets in the property division and given that a fixed alimony term would logically have been something for which Husband, if anyone, would have bargained for, the court was clearly wrong in its rationale for deviating from the alimony durational limits. M.G.L. c. 208, §49(b).

3. Wife's agreement to allow the Property Division section of Separation Agreement to survive resulted in no harm to her.

In furthering the narrative on the "bargained for" rationale, which the court used for finding that alimony deviation was warranted, the court seemed to make specific note that Wife was somehow talked into agreeing to allow the Property Division of the Separation Agreement to survive, such that it could not be modified. R.86.

Such a "bargained for" concession is illusory in that per statute and case law, all property divisions are non-modifiable. See, *Adams v. Adams*, 459 Mass. 361, 378 (2011), citing, G.L. c.208, §37 and *Drapek v.*

Drapek, 399 Mass. 240, 244 (1987) ("judges must take due note that property assignment, unlike alimony, cannot be modified.").

Indeed, "[p]roperty settlements are designed largely to effectuate a final and complete settlement of obligations between the divorcing parties. While alimony is modifiable on the showing of a material change in circumstances, see G.L. c.208, §37 (1994 ed.), property settlements are not." *Heins v. Ledis*, 422 Mass. 477, 483 (1996), citing, *Inker, Alimony and Assignment of Property: The New Statutory Scheme in Massachusetts*, 10 Suffolk U.L. Rev. 1, 10-11 (1975).

V. CONCLUSION

a. Without necessarily conceding the correctness of the Probate Court's December 9, 2014 Supplemental Judgment relative to the award of Wife's attorney's fee, Husband has chosen not to challenge said Judgment on appeal.

b. Likewise, without necessarily conceding the correctness of the Probate Court's September 16, 2014 Judgment relative to 1) there being "no change of circumstance" and 2) Husband's Complaint for Modification as to issue of the termination of alimony, pursuant to the Alimony Reform Act (St. 2011,

c.124, § 5(3)) being brought prematurely, Husband has chosen not to challenge said Modification Judgment on appeal as to those particular rulings only.

c. However, for the aforementioned reasons set forth in the above sections of this appellate brief, this Court should vacate the Probate Court's September 16, 2014 Judgment on Husband's Complaint for Modification as to any and all rationale in support of that court's finding there to have been any reason to deviate from Alimony Reform Act, which would allow for the original alimony award to stand, in any subsequent, timely filing of a Complaint for Modification, pursuant to the Alimony Reform Act.

d. Additionally, should this Court vacate said Modification Judgment and remand the case back to the trial court, said remand order should note that, given the opportunity to do so, at the time of the September 16, 2014 Modification Judgment and despite all of Wife's arguments, the trial court found no additional reasons to find that a deviation from the alimony termination was warranted, beyond those reasons written in said Modification Judgment (R.86).

Respectfully submitted,

Clifford E. George,
Plaintiff/Appellant,
By his attorney,

A handwritten signature in cursive script, reading "Brian J. Kelly". The signature is written in dark ink and is positioned above a horizontal line.

Brian J. Kelly

BBO# 559594

Kelly & Associates, P.C.
21 McGrath Highway, Suite 206
Quincy, MA 02169
Tel: (617) 770-0005

ADDENDUM

Massachusetts General Laws

Chapter 208, § 34

Alimony or assignment of estate; determination of amount; health insurance

Upon divorce or upon a complaint in an action brought at any time after a divorce, whether such a divorce has been adjudged in this commonwealth or another jurisdiction, the court of the commonwealth, provided there is personal jurisdiction over both parties, may make a judgment for either of the parties to pay alimony to the other under sections 48 to 55, inclusive. In addition to or in lieu of a judgment to pay alimony, the court may assign to either husband or wife all or any part of the estate of the other, including but not limited to, all vested and nonvested benefits, rights and funds accrued during the marriage and which shall include, but not be limited to, retirement benefits, military retirement benefits if qualified under and to the extent provided by federal law, pension, profit-sharing, annuity, deferred compensation and insurance. In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under sections 48 to 55, inclusive. In fixing the nature and value of the property to be so assigned, the court shall also consider the present and future needs of the dependent children of the marriage. The court may also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit. When the court makes an order for alimony on behalf of a spouse, said court shall determine whether the obligor under such order has health insurance or other health coverage available to him through an

employer or organization or has health insurance or other health coverage available to him at reasonable cost that may be extended to cover the spouse for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor do one of the following: exercise the option of additional coverage in favor of the spouse, obtain coverage for the spouse, or reimburse the spouse for the cost of health insurance. In no event shall the order for alimony be reduced as a result of the obligor's cost for health insurance coverage for the spouse.

Chapter 208, § 37

Alimony; revision of judgment

After a judgment for alimony or an annual allowance for the spouse or children, the court may, from time to time, upon the action for modification of either party, revise and alter its judgment relative to the amount of such alimony or annual allowance and the payment thereof, and may make any judgment relative thereto which it might have made in the original action.

The court, provided there is personal jurisdiction over both parties, may modify and alter a foreign judgment, decree, or order of divorce or separate support where the foreign court did not have personal jurisdiction over both parties upon the entry of such judgment, decree or order.

The court, provided there is personal jurisdiction over both parties to a foreign judgment, decree, or order of divorce for support, where such foreign court had personal jurisdiction over both parties, may modify and alter such foreign judgment, decree, or order only to the extent it is modifiable or alterable under the laws of such foreign jurisdiction; provided, however, that if both parties are domiciliaries of the commonwealth, then the court may modify and alter the foreign judgment in the same manner as it could have had the judgment, order, or decree been issued by the court; and provided further, that the court may not modify or alter the judgment, order or decree of a foreign jurisdiction which had personal jurisdiction

over both parties concerning the division or assignment of marital assets or property.

Chapter 208, § 48

Definitions applicable to Secs. 49 to 55

As used in sections 49 to 55, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:--

"Alimony", the payment of support from a spouse, who has the ability to pay, to a spouse in need of support for a reasonable length of time, under a court order.

"Full retirement age", the payor's normal retirement age to be eligible to receive full retirement benefits under the United States Old Age, Survivors, and Disability Insurance program; but shall not mean "early retirement age," as defined under 42 U.S.C. 416, if early retirement is available to the payor or maximum benefit age if additional benefits are available as a result of delayed retirement.

"General term alimony", the periodic payment of support to a recipient spouse who is economically dependent.

"Length of the marriage", the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the commonwealth or another court with jurisdiction to terminate the marriage; provided, however, that the court may increase the length of the marriage if there is evidence that the parties' economic marital partnership began during their cohabitation period prior to the marriage.

"Rehabilitative alimony", the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payor spouse under a judgment.

"Reimbursement alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to compensate the

recipient spouse for economic or noneconomic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.

"Transitional alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to transition the recipient spouse to an adjusted lifestyle or location as a result of the divorce.

Chapter 208, § 49

§ 49. Termination, suspension or modification of general term alimony

(a) General term alimony shall terminate upon the remarriage of the recipient or the death of either spouse; provided, however, that the court may require the payor spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) Except upon a written finding by the court that deviation beyond the time limits of this section are required in the interests of justice, if the length of the marriage is 20 years or less, general term alimony shall terminate no later than a date certain under the following durational limits:

(1) If the length of the marriage is 5 years or less, general term alimony shall continue for not longer than one-half the number of months of the marriage.

(2) If the length of the marriage is 10 years or less, but more than 5 years, general term alimony shall continue for not longer than 60 per cent of the number of months of the marriage.

(3) If the length of the marriage is 15 years or less, but more than 10 years, general term alimony shall continue for not longer than 70 per cent of the number of months of the marriage.

(4) If the length of the marriage is 20 years or less, but more than 15 years, general term alimony shall

continue for not longer than 80 per cent of the number of months of the marriage.

(c) The court may order alimony for an indefinite length of time for marriages for which the length of the marriage was longer than 20 years.

(d) General term alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payor shows that the recipient spouse has maintained a common household, as defined in this subsection, with another person for a continuous period of at least 3 months.

(1) Persons are deemed to maintain a common household when they share a primary residence together with or without others. In determining whether the recipient is maintaining a common household, the court may consider any of the following factors:

(i) oral or written statements or representations made to third parties regarding the relationship of the persons;

(ii) the economic interdependence of the couple or economic dependence of 1 person on the other;

(iii) the persons engaging in conduct and collaborative roles in furtherance of their life together;

(iv) the benefit in the life of either or both of the persons from their relationship;

(v) the community reputation of the persons as a couple; or

(vi) other relevant and material factors.

(2) An alimony obligation suspended, reduced or terminated under this subsection may be reinstated upon termination of the recipient's common household relationship; but, if reinstated, it shall not extend beyond the termination date of the original order.

(e) Unless the payor and recipient agree otherwise, general term alimony may be modified in duration or

amount upon a material change of circumstances warranting modification. Modification may be permanent, indefinite or for a finite duration, as may be appropriate. Nothing in this section shall be construed to permit alimony reinstatement after the recipient's remarriage, except by the parties' express written agreement.

(f) Once issued, general term alimony orders shall terminate upon the payor attaining the full retirement age. The payor's ability to work beyond the full retirement age shall not be a reason to extend alimony, provided that:

(1) When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown; provided, however, that in granting deviation, the court shall enter written findings of the reasons for deviation.

(2) The court may grant a recipient an extension of an existing alimony order for good cause shown; provided, however, that in granting an extension, the court shall enter written findings of:

(i) a material change of circumstance that occurred after entry of the alimony judgment; and

(ii) reasons for the extension that are supported by clear and convincing evidence.

Chapter 208, § 50

Termination, extension or modification of rehabilitative alimony

(a) Rehabilitative alimony shall terminate upon the remarriage of the recipient, the occurrence of a specific event in the future or the death of either spouse; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) The alimony term for rehabilitative alimony shall be not more than 5 years. Unless the recipient has remarried, the rehabilitative alimony may be extended

on a complaint for modification upon a showing of compelling circumstances in the event that:

(1) unforeseen events prevent the recipient spouse from being self-supporting at the end of the term with due consideration to the length of the marriage;

(2) the court finds that the recipient tried to become self-supporting; and

(3) the payor is able to pay without undue burden.

(c) The court may modify the amount of periodic rehabilitative alimony based upon material change of circumstance within the rehabilitative period.

Chapter 208, § 51

Termination of reimbursement alimony; modification; applicability of income guidelines

(a) Reimbursement alimony shall terminate upon the death of the recipient or a date certain.

(b) Once ordered, the parties shall not seek and the court shall not order a modification of reimbursement alimony.

(c) Income guidelines in subsection (b) of section 53 shall not apply to reimbursement alimony.

Chapter 208, § 52

Termination of transitional alimony; modification or extension

(a) Transitional alimony shall terminate upon the death of the recipient or a date certain that is not longer than 3 years from the date of the parties' divorce; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) No court shall modify or extend transitional alimony or replace transitional alimony with another form of alimony.

Chapter 208, § 53

**Determination of form, amount and duration of alimony;
maximum amount; income calculation; deviations;
concurrent child support orders**

(a) In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court considers relevant and material.

(b) Except for reimbursement alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient's need or 30 to 35 per cent of the difference between the parties' gross incomes established at the time of the order being issued. Subject to subsection (c), income shall be defined as set forth in the Massachusetts child support guidelines.

(c) When issuing an order for alimony, the court shall exclude from its income calculation:

(1) capital gains income and dividend and interest income which derive from assets equitably divided between the parties under section 34; and

(2) gross income which the court has already considered for setting a child support order.

(d) Nothing in this section shall limit the court's discretion to cast a presumptive child support order under the child support guidelines in terms of unallocated or undifferentiated alimony and child support.

(e) In setting an initial alimony order, or in modifying an existing order, the court may deviate from duration and amount limits for general term alimony and rehabilitative alimony upon written findings that deviation is necessary. Grounds for deviation may include:

- (1) advanced age; chronic illness; or unusual health circumstances of either party;
 - (2) tax considerations applicable to the parties;
 - (3) whether the payor spouse is providing health insurance and the cost of health insurance for the recipient spouse;
 - (4) whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance;
 - (5) sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce;
 - (6) significant premarital cohabitation that included economic partnership or marital separation of significant duration, each of which the court may consider in determining the length of the marriage;
 - (7) a party's inability to provide for that party's own support by reason of physical or mental abuse by the payor;
 - (8) a party's inability to provide for that party's own support by reason of that party's deficiency of property, maintenance or employment opportunity; and
 - (9) upon written findings, any other factor that the court deems relevant and material.
- (f) In determining the incomes of parties with respect to the issue of alimony, the court may attribute income to a party who is unemployed or underemployed.
- (g) If a court orders alimony concurrent with or subsequent to a child support order, the combined

duration of alimony and child support shall not exceed the longer of: (i) the alimony or child support duration available at the time of divorce; or (ii) rehabilitative alimony beginning upon the termination of child support.

Chapter 208, § 54

Remarriage of payor; income from second job or overtime work

(a) In the event of the payor's remarriage, income and assets of the payor's spouse shall not be considered in a redetermination of alimony in a modification action.

(b) Income from a second job or overtime work shall be presumed immaterial to alimony modification if:

(1) a party works more than a single full-time equivalent position; and

(2) the second job or overtime began after entry of the initial order.

Chapter 208, § 55

Reasonable security for alimony in event of payor's death; orders to maintain life insurance; modification of orders

(a) The court may require reasonable security for alimony in the event of the payor's death during the alimony period. Security may include, but shall not be limited to, maintenance of life insurance.

(b) Orders to maintain life insurance shall be based upon due consideration of the following factors: age and insurability of the payor; cost of insurance; amount of the judgment; policies carried during the marriage; duration of the alimony order; prevailing interest rates at the time of the order; and other obligations of the payor.

(c) A court may modify orders to maintain security upon a material change of circumstance.

Legislative Enactments

CHAPTER 124, H.B. No. 3617, COMMONWEALTH--ALIMONY AN ACT reforming alimony in the commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

<< MA ST 208 § 34 >>

SECTION 1. The first sentence of section 34 of chapter 208 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following words:-- under sections 48 to 55, inclusive.

<< MA ST 208 § 34 >>

SECTION 2. Said section 34 of said chapter 208, as so appearing, is hereby further amended by striking out the third sentence and inserting in place thereof the following sentence:-- In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under sections 48 to 55, inclusive.

SECTION 3. Said chapter 208 is hereby further amended by adding the following 8 sections:--

<< MA ST 208 § 48 >>

Section 48. As used in sections 49 to 55, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:--

"Alimony", the payment of support from a spouse, who has the ability to pay, to a spouse in need of support for a reasonable length of time, under a court order.

"Full retirement age", the payor's normal retirement age to be eligible to receive full retirement benefits under the United States Old Age, Survivors, and Disability Insurance program; but shall not mean "early retirement age," as defined under 42 U.S.C.

416, if early retirement is available to the payor or maximum benefit age if additional benefits are available as a result of delayed retirement.

"General term alimony", the periodic payment of support to a recipient spouse who is economically dependent.

"Length of the marriage", the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the commonwealth or another court with jurisdiction to terminate the marriage; provided, however, that the court may increase the length of the marriage if there is evidence that the parties' economic marital partnership began during their cohabitation period prior to the marriage.

"Rehabilitative alimony", the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payor spouse under a judgment.

"Reimbursement alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to compensate the recipient spouse for economic or noneconomic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.

"Transitional alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to transition the recipient spouse to an adjusted lifestyle or location as a result of the divorce.

<< MA ST 208 § 49 >>

Section 49. (a) General term alimony shall terminate upon the remarriage of the recipient or the death of either spouse; provided, however, that the court may require the payor spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) Except upon a written finding by the court that deviation beyond the time limits of this section are required in the interests of justice, if the length of the marriage is 20 years or less, general term alimony shall terminate no later than a date certain under the following durational limits:

(1) If the length of the marriage is 5 years or less, general term alimony shall continue for not longer than one-half the number of months of the marriage.

(2) If the length of the marriage is 10 years or less, but more than 5 years, general term alimony shall continue for not longer than 60 per cent of the number of months of the marriage.

(3) If the length of the marriage is 15 years or less, but more than 10 years, general term alimony shall continue for not longer than 70 per cent of the number of months of the marriage.

(4) If the length of the marriage is 20 years or less, but more than 15 years, general term alimony shall continue for not longer than 80 per cent of the number of months of the marriage.

(c) The court may order alimony for an indefinite length of time for marriages for which the length of the marriage was longer than 20 years.

(d) General term alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payor shows that the recipient spouse has maintained a common household, as defined in this subsection, with another person for a continuous period of at least 3 months.

(1) Persons are deemed to maintain a common household when they share a primary residence together with or without others. In determining whether the recipient is maintaining a common household, the court may consider any of the following factors:

(i) oral or written statements or representations made to third parties regarding the relationship of the persons;

(ii) the economic interdependence of the couple or economic dependence of 1 person on the other;

(iii) the persons engaging in conduct and collaborative roles in furtherance of their life together;

(iv) the benefit in the life of either or both of the persons from their relationship;

(v) the community reputation of the persons as a couple; or

(vi) other relevant and material factors.

(2) An alimony obligation suspended, reduced or terminated under this subsection may be reinstated upon termination of the recipient's common household relationship; but, if reinstated, it shall not extend beyond the termination date of the original order.

(e) Unless the payor and recipient agree otherwise, general term alimony may be modified in duration or amount upon a material change of circumstances warranting modification. Modification may be permanent, indefinite or for a finite duration, as may be appropriate. Nothing in this section shall be construed to permit alimony reinstatement after the recipient's remarriage, except by the parties' express written agreement.

(f) Once issued, general term alimony orders shall terminate upon the payor attaining the full retirement age. The payor's ability to work beyond the full retirement age shall not be a reason to extend alimony, provided that:

(1) When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown; provided, however, that in granting deviation, the court shall enter written findings of the reasons for deviation.

(2) The court may grant a recipient an extension of an existing alimony order for good cause shown; provided, however, that in granting an extension, the court shall enter written findings of:

(i) a material change of circumstance that occurred after entry of the alimony judgment; and

(ii) reasons for the extension that are supported by clear and convincing evidence.

<< MA ST 208 § 50 >>

Section 50. (a) Rehabilitative alimony shall terminate upon the remarriage of the recipient, the occurrence of a specific event in the future or the death of either spouse; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) The alimony term for rehabilitative alimony shall be not more than 5 years. Unless the recipient has remarried, the rehabilitative alimony may be extended on a complaint for modification upon a showing of compelling circumstances in the event that:

(1) unforeseen events prevent the recipient spouse from being self-supporting at the end of the term with due consideration to the length of the marriage;

(2) the court finds that the recipient tried to become self-supporting; and

(3) the payor is able to pay without undue burden.

(c) The court may modify the amount of periodic rehabilitative alimony based upon material change of circumstance within the rehabilitative period.

<< MA ST 208 § 51 >>

Section 51. (a) Reimbursement alimony shall terminate upon the death of the recipient or a date certain.

(b) Once ordered, the parties shall not seek and the court shall not order a modification of reimbursement alimony.

(c) Income guidelines in subsection (b) of section 53 shall not apply to reimbursement alimony.

<< MA ST 208 § 52 >>

Section 52. (a) Transitional alimony shall terminate upon the death of the recipient or a date certain that is not longer than 3 years from the date of the parties' divorce; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) No court shall modify or extend transitional alimony or replace transitional alimony with another form of alimony.

<< MA ST 208 § 53 >>

Section 53. (a) In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court considers relevant and material.

(b) Except for reimbursement alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient's need or 30 to 35 per cent of the difference between the parties' gross incomes established at the time of the order being issued. Subject to subsection (c), income shall be defined as set forth in the Massachusetts child support guidelines.

(c) When issuing an order for alimony, the court shall exclude from its income calculation:

(1) capital gains income and dividend and interest income which derive from assets equitably divided between the parties under section 34; and

(2) gross income which the court has already considered for setting a child support order.

(d) Nothing in this section shall limit the court's discretion to cast a presumptive child support order under the child support guidelines in terms of unallocated or undifferentiated alimony and child support.

(e) In setting an initial alimony order, or in modifying an existing order, the court may deviate from duration and amount limits for general term alimony and rehabilitative alimony upon written findings that deviation is necessary. Grounds for deviation may include:

- (1) advanced age; chronic illness; or unusual health circumstances of either party;
- (2) tax considerations applicable to the parties;
- (3) whether the payor spouse is providing health insurance and the cost of health insurance for the recipient spouse;
- (4) whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance;
- (5) sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce;
- (6) significant premarital cohabitation that included economic partnership or marital separation of significant duration, each of which the court may consider in determining the length of the marriage;
- (7) a party's inability to provide for that party's own support by reason of physical or mental abuse by the payor;
- (8) a party's inability to provide for that party's own support by reason of that party's deficiency of property, maintenance or employment opportunity; and

(9) upon written findings, any other factor that the court deems relevant and material.

(f) In determining the incomes of parties with respect to the issue of alimony, the court may attribute income to a party who is unemployed or underemployed.

(g) If a court orders alimony concurrent with or subsequent to a child support order, the combined duration of alimony and child support shall not exceed the longer of: (i) the alimony or child support duration available at the time of divorce; or (ii) rehabilitative alimony beginning upon the termination of child support.

<< MA ST 208 § 54 >>

Section 54. (a) In the event of the payor's remarriage, income and assets of the payor's spouse shall not be considered in a redetermination of alimony in a modification action.

(b) Income from a second job or overtime work shall be presumed immaterial to alimony modification if:

(1) a party works more than a single full-time equivalent position; and

(2) the second job or overtime began after entry of the initial order.

<< MA ST 208 § 55 >>

Section 55. (a) The court may require reasonable security for alimony in the event of the payor's death during the alimony period. Security may include, but shall not be limited to, maintenance of life insurance.

(b) Orders to maintain life insurance shall be based upon due consideration of the following factors: age and insurability of the payor; cost of insurance; amount of the judgment; policies carried during the marriage; duration of the alimony order; prevailing interest rates at the time of the order; and other obligations of the payor.

(c) A court may modify orders to maintain security upon a material change of circumstance.
<< Note: MA ST 208 § 48; 208 § 49; 208 § 50; 208 § 51; 208 § 52; 208 § 53; 208 § 54; 208 § 55 >>

SECTION 4. (a) Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered before March 1, 2012 shall terminate only under such judgments, under a subsequent modification or as otherwise provided for in this act.

(b) Sections 48 to 55, inclusive, of said chapter 208 shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments; provided, however, that existing alimony judgments that exceed the durational limits under section 49 of said chapter 208 shall be deemed a material change of circumstance that warrant modification.

Existing alimony awards shall be deemed general term alimony. Existing alimony awards which exceed the durational limits established in said section 49 of said chapter 208 shall be modified upon a complaint for modification without additional material change of circumstance, unless the court finds that deviation from the durational limits is warranted.

(c) Under no circumstances shall said sections 48 to 55, inclusive, of said chapter 208 provide a right to seek or receive modification of an existing alimony judgment in which the parties have agreed that their alimony judgment is not modifiable, or in which the parties have expressed their intention that their agreed alimony provisions survive the judgment and therefore are not modifiable.

<< Note: MA ST 208 § 48; 208 § 49; 208 § 50; 208 § 51; 208 § 52; 208 § 53; 208 § 54; 208 § 55 >>

SECTION 5. Any complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the durational limits of section 49 of chapter 208 of the General Laws, may only be filed under the following time limits:

(1) Payors who were married to the alimony recipient 5 years or less, may file a modification action on or after March 1, 2013.

(2) Payors who were married to the alimony recipient 10 years or less, but more than 5 years, may file a modification action on or after March 1, 2014.

(3) Payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015.

(4) Payors who were married to the alimony recipient 20 years or less, but more than 15 years, may file a modification action on or after September 1, 2015.

<< Note: MA ST 208 § 48; 208 § 49; 208 § 50; 208 § 512
208 § 52; 208 § 53; 208 § 54; 208 § 55 >>

SECTION 6. Notwithstanding clauses (1) to (4) of section 5 of this act, any payor who has reached full retirement age, as defined in section 48 of chapter 208 of the General Laws, or who will reach full retirement age on or before March 1, 2015 may file a complaint for modification on or after March 1, 2013.

<< Note: MA ST 208 § 34; 208 § 48; 208 § 49; 208 § 50;
208 § 51; 208 § 52; 208 § 53; 208 § 542 208 § 55 >>

SECTION 7. This act shall take effect on March 1, 2012.

Approved September 26, 2011.

Secondary Sources

Restatement (Second) of Contracts § 212
Interpretation of Integrated Agreement

- (1) The interpretation of an integrated agreement is directed to the meaning of the terms of the writing or writings in the light of the circumstances, in accordance with the rules stated in this Chapter.
- (2) A question of interpretation of an integrated agreement is to be determined by the trier of fact if it depends on the credibility of extrinsic evidence or on a choice among

reasonable inferences to be drawn from extrinsic evidence. Otherwise a question of interpretation of an integrated agreement is to be determined as a question of law.

Comment:

a. "Objective" and "subjective" meaning.

Interpretation of contracts deals with the meaning given to language and other conduct by the parties rather than with meanings established by law. But the relevant intention of a party is that manifested by him rather than any different undisclosed intention. In cases of misunderstanding, there may be a contract in accordance with the meaning of one party if the other knows or has reason to know of the misunderstanding and the first party does not. See §§ 200, 201. The meaning of one party may prevail as to one term and the meaning of the other as to another term; thus the contract as a whole may not be entirely in accordance with the understanding of either. When a party is thus held to a meaning of which he had reason to know, it is sometimes said that the "objective" meaning of his language or other conduct prevails over his "subjective" meaning. Even so, the operative meaning is found in the transaction and its context rather than in the law or in the usages of people other than the parties.

• **Illustrations:**

Illustrations:

- 1. In an integrated agreement A promises to sell and B to buy described real estate. A intends to sell Blackacre; B intends to buy Whiteacre. The writing reasonably describes Greenacre, and neither party has any more reason than the other to know of the misdescription. There is no contract.
- 2. In an integrated agreement A agrees to sell and B to buy certain patent rights. A intends to sell only the rights under the British patent on a certain invention; B intends also to buy rights under American and French patents. If A has reason to know that B intends to buy the American rights, B

has reason to know that A does not intend to sell the French rights, and the language used can be read to cover the British and American but not the French rights, that may be determined to be the proper interpretation.

b. Plain meaning and extrinsic evidence. It is sometimes said that extrinsic evidence cannot change the plain meaning of a writing, but meaning can almost never be plain except in a context. Accordingly, the rule stated in Subsection (1) is not limited to cases where it is determined that the language used is ambiguous. Any determination of meaning or ambiguity should only be made in the light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties. See §§ 202, 219- 23. But after the transaction has been shown in all its length and breadth, the words of an integrated agreement remain the most important evidence of intention. Standards of preference among reasonable meanings are stated in §§ 203, 206, 207.

- **Illustrations:**

Illustrations:

- 3. A agrees orally with B, a stockbroker, that in transactions between them "abracadabra" shall mean X Company. A sends a signed written order to B to buy 100 shares "abracadabra," and B buys 100 shares of X Company. The parties are bound in accordance with the oral agreement.
- 4. A and B are engaged in buying and selling shares of stock from each other, and agree orally to conceal the nature of their dealings by using the word "sell" to mean "buy" and using the word "buy" to mean "sell." A sends a written offer to B to "sell" certain shares, and B accepts. The parties are bound in accordance with the oral agreement.

c. *Statements of intention.* The rule of Subsection (1) permits reference to the negotiations of the parties, including statements of intention and even positive promises, so long as they are used to show the meaning of the writing. A contrary rule in the interpretation of wills is sometimes stated broadly enough to apply to the interpretation of contracts, but that rule is subject to exceptions and rests in part on the more rigorous formal requirements to which wills are subject. Statements of a contracting party subsequent to the adoption of an integration are admissible against him to show his understanding of the meaning asserted by the other party.

• **Illustrations:**

Illustrations:

- o 5. In an integrated agreement A promises B to insert B's "business card" in A's "advertising chart" for a price to be paid when the chart is "published." The quoted terms are to be read in the light of the circumstances known to the parties, including their oral statements as to their meaning.
- o 6. In an integrated agreement A contracts to sell "my horse," and B contracts to buy it. A owns two horses. It may be shown by oral evidence, including statements of the parties, that both A and B meant the same horse.

d. *"Question of law."* Analytically, what meaning is attached to a word or other symbol by one or more people is a question of fact. But general usage as to the meaning of words in the English language is commonly a proper subject for judicial notice without the aid of evidence extrinsic to the writing. Historically, moreover, partly perhaps because of the fact that jurors were often illiterate, questions of interpretation of written documents have been treated as questions of law in the sense that they are decided by the trial judge rather than by the jury. Likewise, since an appellate court is commonly in as good a position to decide such questions as the trial judge, they have been treated as questions of law for

purposes of appellate review. Such treatment has the effect of limiting the power of the trier of fact to exercise a dispensing power in the guise of a finding of fact, and thus contributes to the stability and predictability of contractual relations. In cases of standardized contracts such as insurance policies, it also provides a method of assuring that like cases will be decided alike.

e. Evaluation of extrinsic evidence. Even though an agreement is not integrated, or even though the meaning of an integrated agreement depends on extrinsic evidence, a question of interpretation is not left to the trier of fact where the evidence is so clear that no reasonable person would determine the issue in any way but one. But if the issue depends on evidence outside the writing, and the possible inferences are conflicting, the choice is for the trier of fact.

Restatement (Second) of Contracts § 213

Effect of Integrated Agreement on Prior Agreements
(Parole Evidence Rule)

- (1) A binding integrated agreement discharges prior agreements to the extent that it is inconsistent with them.
- (2) A binding completely integrated agreement discharges prior agreements to the extent that they are within its scope.
- (3) An integrated agreement that is not binding or that is voidable and avoided does not discharge a prior agreement. But an integrated agreement, even though not binding, may be effective to render inoperative a term which would have been part of the agreement if it had not been integrated.

Comment:

a. Parole evidence rule. This Section states what is commonly known as the parole evidence rule. It is not a rule of evidence but a rule of substantive law. Nor is it a rule of interpretation; it defines the subject matter of interpretation. It renders inoperative prior written agreements as well as prior oral agreements. Where writings relating to the same subject matter are

assented to as parts of one transaction, both form part of the integrated agreement. Where an agreement is partly oral and partly written, the writing is at most a partially integrated agreement. See § 209.

b. Inconsistent terms. Whether a binding agreement is completely integrated or partially integrated, it supersedes inconsistent terms of prior agreements. To apply this rule, the court must make preliminary determinations that there is an integrated agreement and that it is inconsistent with the term in question. See § 209. Those determinations are made in accordance with all relevant evidence, and require interpretation both of the integrated agreement and of the prior agreement. The existence of the prior agreement may be a circumstance which sheds light on the meaning of the integrated agreement, but the integrated agreement must be given a meaning to which its language is reasonably susceptible when read in the light of all the circumstances. See §§ 212, 214.

- **Illustrations:**

Illustrations:

- o 1. D Corporation regularly borrows money from C Bank. S, the principal stockholder in D, offers to guarantee payment if C will increase the amounts lent. There is a bank custom to make such loans only on adequate collateral supplied by the borrower, and C promises S to follow the custom. S then executes a written agreement with C guaranteeing payment of future loans to D "with or without security." If the written agreement is a binding integrated agreement, C's prior promise is discharged.
- o 2. A orally agrees to sell a city lot to B. The city is installing a sidewalk in front of the lot, and A orally agrees to pay the cost to be assessed by the city in an amount not exceeding \$45. B then retains a lawyer to draw up a written agreement, and A and B execute it, A without reading it. The agreement provides that A will pay all costs of the installation of the sidewalk, but does not mention any dollar limit. If the

written agreement is a binding integrated agreement, any agreement for a \$45 limit is discharged.

c. *Scope of a completely integrated agreement.* Where the parties have adopted a writing as a complete and exclusive statement of the terms of the agreement, even consistent additional terms are superseded. See § 216. But there may still be a separate agreement between the same parties which is not affected. To apply the rule of Subsection (2) the court in addition to determining that there is an integrated agreement and that it is completely integrated, must determine that the asserted prior agreement is within the scope of the integrated agreement. Those determinations are made in accordance with all relevant evidence, and require interpretation both of the integrated agreement and of the prior agreement.

- **Illustrations:**

Illustrations:

- o 3. In May A and B exchange properties and agree orally that A will make certain repairs on the property to be conveyed by A to B, the repairs to be finished by October 1. A and B then draw up and sign a memorandum of the repair agreement, specifying all the terms except that the memorandum is silent as to time of performance. If the memorandum is a binding completely integrated agreement, the agreement to finish by October 1 is discharged, and the repairs are to be finished within a reasonable time. The oral agreement as to October 1 may be relevant evidence as to what is a reasonable time.
- o 4. A and B make an oral agreement for the sale of land and a hotel thereon, together with the hotel furniture. They employ a lawyer to prepare a written contract. He does so, and they sign it. It contains no mention of personal property. The agreement as to furniture is discharged if there is a binding completely integrated agreement covering the entire transaction, but not if

only the part of the agreement relating to real property is integrated.

d. Effect of non-binding integration. An integrated agreement does not supersede prior agreements if it is not binding, for example, by reason of lack of consideration, or if it is voidable and avoided. The circumstances may, however, show an agreement to discharge a prior agreement without regard to whether the integrated agreement is binding, and such an agreement may be effective. Moreover, an integrated agreement may be effective to render inoperative an oral term which would have been part of the agreement if it had not been integrated. The integrated agreement may then be without consideration, even though the inoperative oral term would have furnished consideration.

• **Illustrations:**

Illustrations:

- o 5. A and B enter into a contract that B will build a house on A's land for a price. Later they enter into an oral contract by which B promises to add a porch and A promises to pay an extra \$2,000. Still later they enter into an integrated agreement in which B promises to build according to the original plans and A promises to pay the extra \$2,000. The integrated agreement is not binding for lack of consideration, and the oral intermediate agreement is not discharged.
- o 6. A and B enter into a contract that B will build a house on A's land for a price. Later B offers to add a porch if A will sign a new contract. They then enter into an integrated agreement in which B promises to build according to the original plans and A promises to pay an extra \$2,000. If the integrated agreement is inconsistent with the porch offer, or if it is a completely integrated agreement and the matter of the porch is within its scope, the integrated agreement is effective to discharge the

porch offer but is not binding for lack of
consideration.

RECORD APPENDIX

Table of Contents

DOCKET ENTRIES: SU-01D-0934-DV1	R.1
COMPLAINT FOR DIVORCE.	R.7
ANSWER TO COMPLAINT FOR DIVORCE	R.10
JUDGMENT OF DIVORCE NISI.	R.11
SEPARATION AGREEMENT.	R.12
COMPLAINT FOR MODIFICATION.	R.26
AMENDED COMPLAINT FOR MODIFICATION.	R.27
DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR MODIFICATION AND DEFENSES.	R.28
PLAINTIFF'S PRE-TRIAL CONFERENCE MEMORANDUM . . .	R.31
PRE TRIAL MEMORANDUM OF DEFENDANT RELATIVE TO THE PLAINTIFF'S COMPLAINT FOR MODIFICATION AND HER COUNTERCLAIMS	R.36
TEMPORARY ORDERS - May 8, 2014.	R.44
JOINT UNCONTESTED STATEMENT OF FACTS.	R.45
PLAINTIFF'S MEMORANDUM OF LAW	R.47
SUBMISSION OF THE DEFENDANT, JACQUELYN GEORGE IN SUPPORT OF HER OPPOSITION TO PLAINTIFF'S REQUEST TO TERMINATE ALIMONY	R.65
MODIFICATION JUDGMENT - September 16, 2014. . . .	R.81
MEMORANDUM OF DECISION - September 16, 2014 . . .	R.82
NOTICE OF APPEAL.	R.87
DEFENDANT, JACQUELYN GEORGE'S MOTION FOR ATTORNEY'S FEES AND COSTS.	R.89

PLAINTIFF'S OPPOSITION TO DEFENDANT'S REQUEST OF ATTORNEY'S FEES.	R.105
SUPPLEMENTAL MODIFICATION JUDGMENT December 9, 2014.	R.111
MEMORANDUM OF DECISION - December 9, 2014.	R.112
NOTICE OF APPEAL (SECOND).	R.117

IMPOUNDED RECORD APPENDIX

(Bound Separately)
Table of Contents

FINANCIAL STATEMENT OF CLIFFORD E. GEORGE, DATED NOVEMBER 20, 2002.	IR.1
FINANCIAL STATEMENT OF CLIFFORD E. GEORGE, DATED MAY 8, 2014	IR.10

TRANSCRIPT

MOTION HEARING ATTORNEY'S FEES AND COSTS DECEMBER 9, 2014.	1
---	---



**MASSACHUSETTS
SUFFOLK PROBATE AND FAMILY COURT
Docket Report**

SU01D0934DV1

George, Clifford vs. George, Jacquelyn

CASE TYPE:	Domestic Relations	FILE DATE:	05/29/2001
ACTION CODE:	DB	CASE TRACK:	
DESCRIPTION:	Divorce 1B		
CASE DISPOSITION DATE	01/01/2003	CASE STATUS:	Closed
CASE DISPOSITION:	Disposed	STATUS DATE:	01/01/2003
CASE JUDGE:	Ross, Abbe	CASE SESSION:	Judge Ross Session

LINKED CASE

PARTIES

Plaintiff

George, Clifford E
18 Mulberry Lane
Pelham, NH 03076

Private Counsel

559594

Brian J. Kelly
Kelly & Associates, P.C.
Kelly & Associates, P.C.
21 McGrath Highway
Suite 206
Quincy, MA 02169
Work Phone (617) 770-0005
Added Date: 09/23/2014

Private Counsel

553836

Laura J. Cervizzi
Cervizzi & Associates
Cervizzi & Associates
350 Park Street
Park Place South Ste. 201&203
North Reading, MA 01864
Work Phone (978) 276-0777
Added Date: 07/19/2001

Private Counsel

666980

Laura Messier
Cervizzi and Associates
Cervizzi and Associates
350 Park Street
Park Place South Suite 201&203
North Reading, MA 01864
Work Phone (978) 276-0777
Added Date: 12/09/2014

Private Counsel

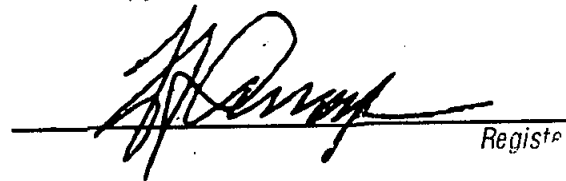
670568

Meghan Tafe Vadakekalam
Kelly & Associates, P.C.
Kelly & Associates, P.C.
21 McGrath Highway
Suite 206
Quincy, MA 02169
Work Phone (617) 773-0503
Added Date: 09/23/2014

JUL 06 2015

Suffolk, S.S. _____, Probate Court.
(Date)

A True Copy Attest



Register

- R.1 -



**MASSACHUSETTS
SUFFOLK PROBATE AND FAMILY COURT
Docket Report**

Defendant George, Jacquelyn A 15 Short Street WINTHROP, MA 02152	Private Counsel Alessandra Petruccelli Law Office of Alessandra Petruccelli Law Office of Alessandra Petruccelli 1216 Bennington Street East Boston, MA 02128 Work Phone (617) 567-7750 Added Date: 03/28/2014	653963
--	--	---------------

EVENTS				
Date	Session	Event	Result	Resulting Judge
05/08/2014	Judge Stahlin Session	Pretrial Conference Domestic and Equity		
07/10/2014	Judge Stahlin Session	Pretrial Continued		
12/05/2014	Judge Stahlin Session	Motion		
12/09/2014	Judge Stahlin Session	Motion		
07/17/2015	Judge Ross Session	Motion		

- R.2 -



**MASSACHUSETTS
SUFFOLK PROBATE AND FAMILY COURT
Docket Report**

FINANCIAL DETAILS					
Date	Fees/Fines/Costs	Assessed	Paid	Dismissed	Balance
08/26/2013	Blank Summons (except in matters relating to Contempt or Paternity) MGL 262 section 4b Receipt: 60546 Date: 08/26/2013	5.00	5.00	0.00	0.00
08/26/2013	FEE - Modification Action related to child support, custody, and visitation MGL 262 s.40 Receipt: 60546 Date: 08/26/2013	50.00	50.00	0.00	0.00
12/19/2014	Tape Cassette Recordings of Proceedings plus postage per ninety minutes MGL 262 section 4b Receipt: 77444 Date: 12/19/2014	50.50	50.50	0.00	0.00
12/19/2014	Unattested Copy of Court Documents in Possession of Clerk, Register or Recorder MGL 262 s. 4b Receipt: 77444 Date: 12/19/2014	4.00	4.00	0.00	0.00
04/16/2015	FEE - Entry of action for modification of judgement relative to non-child issues, MGL 262 s.40 Receipt: 81262 Date: 04/16/2015	150.00	150.00	0.00	0.00
04/16/2015	Blank Summons (except in matters relating to Contempt or Paternity) MGL 262 section 4b Receipt: 81262 Date: 04/16/2015	5.00	5.00	0.00	0.00
Total		264.50	264.50	0.00	0.00

- R.3 -



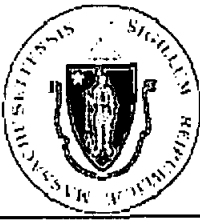
**MASSACHUSETTS
SUFFOLK PROBATE AND FAMILY COURT
Docket Report**

INFORMATIONAL DOCKET ENTRIES			
Date	Ref	Description	Judge
05/29/2001	1	Complaint for Divorce	
05/29/2001	2	CERTIFICATE OF MARRIAGE	
07/18/2001	3	JACQUELYN A GEORGE 's answer to Complaint for Divorce	
07/18/2001	4	Notice of Appearance of PATRICIA FERNANDEZ , counsel for JACQUELYN A GEORGE	
07/31/2001	5	Summons filed, date of service 06/05/2001	
11/20/2002	8	JUDGMENT OF DIVORCE NISI DATED 11/20/2002 . Jeremy A. Stahlin , J. ATTYS/PTYS ND	
11/20/2002	9	AGREEMENT	
10/23/2003	6	NOTICE OF CHANGE OF ADDRESS OF LAURA CERVIZZI , COUNSEL FOR CLIFFORD E GEORGE	
04/15/2004	7	1 DIV CERT DEL-CLIFFORD GEORGE]	
03/14/2009		Informational docket entry: Converted Case from BasCOT - P&F on 03/14/2009	
03/14/2009		Case disposed at conversion on 03/14/2009	
08/26/2013	10	Subsequent Action for Modification filed	
09/24/2013	11	Amended Complaint for Modification -w/o case	
10/02/2013	12	Summons Filed, Date of Service 09/16/2013	
11/12/2013	13	Appearance by Attorney, Patricia S Fernandez, Esq.	
11/12/2013	14	Def's Answer To Pl's Complaint For Modification And Defenses	
03/26/2014	15	Request for pt / jas	
03/28/2014	16	Pre-Trial Notice and Order Sent Event: Pretrial Conference Domestic and Equity Date: 05/01/2014 Time: 09:00 AM	Stahlin
04/11/2014	17	Assented to Motion tp continue Pre-Trial currently scheduled for 05/01/14, case sent to Sharon Blocker 04/11/14	
04/16/2014	18	Motion To Continue Pre-Trial Allowed 04/16/2014	Stahlin
05/07/2014	19	Clifford E George's Pretrial Memorandum	
05/08/2014	20	Financial Statement Applies To: George, Jacquelyn A (Defendant)	
05/08/2014	21	Clifford E George's Pretrial Memorandum	
05/08/2014	22	Financial Statement Applies To: George, Clifford E (Plaintiff)	
05/08/2014	23	Pre Trial Memorandum of Defendnat relative to the Pl's complaint for modification and her Counterclaims	
07/10/2014	24	Affidavit of Joint Uncontested statement of facts	
07/10/2014	25	Pl's Memorandum of law	



**MASSACHUSETTS
SUFFOLK PROBATE AND FAMILY COURT
Docket Report**

07/10/2014	26	Affidavit of submission of the defendant ,Jacquelyn George in support of her opposition to Pl's request to terminate Alimony Background	
07/10/2014	27	Assented to Motion to waive the appearance of the defendant at hearing on July 10,14	
09/18/2014	28	Motion to waive the appearance of the defendant at hearing on July 10,14 Allowed 07/10/2014	Stahlin
09/18/2014	29	Temporary Order dated 05/08/14 on a complaint for modification filed 08/26/13 as Amended	Stahlin
09/18/2014	30	Modification Judgment dated 09/16/14	Stahlin
09/18/2014	31	Memorandum of Decision dated 09/16/14 on a Complaint for modification filed 08/26/13 as Amended	Stahlin
09/23/2014	33	ATTY.S KELLY AND VADAKEKALAM Notice OF LIMITED APPEARANCE	
09/23/2014	34	Notice of Receipt of Appeal	
09/23/2014	32	Notice of Appeal by Clifford E George from Modificaiton Jufdgment Dated 09/16/2014. Judge and Parties Notified 09/23/2014.	
10/20/2014	36	Affidavit	
10/20/2014	35	Motion FOR ATTY FEES	
11/24/2014	41	Motion to Continue Hearing Scheduled for December 5, 2014 Until December 9, 2014 Assented To W/O Case	
11/25/2014	37	/etter dated 10/09/2014 regarding Transcripts u/ MRAP 9(c) (2) and Request assembly of Record on Appeal (note: hearing date on Motion for atty fees on 12/05/2014) (without case folder)	
11/26/2014	42	Updated Affidavit in Support of Fees Applies To: Petruccelli, Esq., Alessandra (Attorney) on behalf of George, Jacquelyn A (Defendant)	
12/09/2014	43	Affidavit of Laura Messier For Attorney's Fees and Costs W/O Case	
12/09/2014	44	Opposition to Defendant's Request for Attorney's Fees W/O Case Applies To: George, Clifford E (Plaintiff)	
12/11/2014	38	Supplement Modification Judgment	
12/11/2014	39	Memorandum of Decision	
12/11/2014	40	Motion for attorney fees and costs Allowed 12/10/2014	
12/16/2014	45	Temporary Order (On a Complaint for Modification filed 8/26/13 as Amended) Dated 11/13/2014 W/O Case	Stahlin
12/18/2014	46	Notice of Appeal by Clifford E George from Supplemental Judgment Dated 12/09/2014. Judge and Parties Notified 12/18/2014. (by mail, without case folder)	
12/18/2014	47	Notice of Receipt of Appeal - sent on 12/18/2014 (without case folder)	



MASSACHUSETTS
SUFFOLK PROBATE AND FAMILY COURT
Docket Report

04/16/2015	48	Transcript of 12/09/2014 (by Mail, without case folder, From Transcriber)
04/16/2015	49	Subsequent Action for Modification filed
04/17/2015	50	Letter Requesting Assembly of Record
04/22/2015	51	Notice of Assembly of Record. Attorney/Parties and Appeals Court notified on 04/22/2015
05/01/2015	52	Summons Filed, Date of Service 04/22/2015
05/05/2015	53	Notice of Docket Entry from Appeals Court entered on 04/29/2015, Docket # 2015-P-0593 (by mail, without case folder)
05/15/2015	54	Motion TO DISMISS COMPLAINT FOR MODIFICATION OF ALIMONY AND REQUEST FOR ATTORNEY'S FEES

- R.6 -

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET # 01109342V1
(JAS)

COMPLAINT FOR DIVORCE


CLIFFORD E. GEORGE, PLAINTIFF

v.

JACQUELYN A GEORGE, DEFENDANT

1. Plaintiff, who resides at 15 Short Street, Winthrop, Suffolk, Massachusetts 02152, is lawfully married to Defendant, who now resides at 15 Short Street, Winthrop, Suffolk, Massachusetts.
2. The parties were married at Winthrop, on June 24, 1989, and last lived together at 15 Short Street, Winthrop, Suffolk, Massachusetts, on May 23, 2001.
3. The minor child of this marriage and date of birth is:
None
4. Plaintiff certifies that no previous action for divorce, annulling or affirming marriage, separate support, desertion, living apart for justifiable cause, or custody of child has been brought by either party against the other except: None.
5. On or about May 1, 2001, Defendant and Plaintiff realized that the marriage was irretrievably broken down. (1B).
6. Wherefore, Plaintiff requests that the Court:
 - ☒ grant a divorce for irretrievable breakdown.
 - ☒ prohibit Defendant from imposing any restraint on Plaintiff's personal liberty.
 - ☐ grant her custody of the above-named child, _____.
 - ☐ order a suitable amount for support of Plaintiff and said minor child.
 - ☒ order conveyance of the real estate located at 15 Short Street, Winthrop, Massachusetts, standing in the name(s) of Clifford E. & Jacquelyn A. George, as recorded with Suffolk County Registry of Deeds, Book 24803, Page 73.
 - ☐ allow Plaintiff to resume her former name of _____.
 - ☐ Other—specify.

Dated: May 23, 2001


Laura J. Cervizzi, P.C.
Attorney for Plaintiff
110 Winn Street
Woburn, MA 01801

BBO #553836

Telephone: (781) 938-8474
Telefax: (781) 935-4918

COMPLAINT FOR DIVORCE

FOR PLAINTIFF:

Name: Laura J. Cervizzi, P.C.
Address: 110 Winn Street
Woburn, MA 01801
Telephone: (781) 938-8474
BBO# 553836

Docket Number: _____

Filing Date: MAY 29 2001 \$111.00 8/1/01

Judgment Date: _____

Temporary Orders: _____

FOR DEFENDANT:

Name: _____
Address: _____
Telephone: ()
BBO# _____

Documents filed:

Marriage Certificate



Plaintiff's Financial Statement



Defendant's Financial Statement



Affidavit Disclosing Care or
Custody Proceedings



Service on Summons



Instructions

Refer to Massachusetts General Laws Chapter 208 and Massachusetts Rules of Domestic Relations Procedure.

1. A certified copy of your civil marriage certificate must be filed with this Complaint.
2. Recite street address, city or town, and county in paragraphs 1 and 2; city or town and county or state in paragraph 5.
3. In completing paragraph 4, please provide only the docket number and county.
4. The allegations in paragraph 5 must comply with General Laws Chapter 208, Sections 1 and 2, and Massachusetts Rules of Domestic Relations Procedure Rule 8.
5. Affidavit Disclosing Care or Custody Proceedings must be filed with this complaint pursuant to Trial Court Rule IV identifying the minor child(ren) of this marriage.
6. All requests for temporary relief must be made by motion, although several prayers may be contained in one. For temporary restraining orders see Massachusetts Rules Domestic Relations Procedure Rule 65, affidavit requirement.
7. If attachment or trustee process is desired, a motion with affidavit must be filed. A certificate of insurance is normally not required in domestic relations cases. See Massachusetts Rules Domestic Relations Procedure Rules 4.1 and 4.2.
8. Plaintiff must sign this Complaint if appearing pro se; otherwise plaintiff's attorney must sign and give his/her address in the space provided.

Filed

MAY 29 2001

Paul Smith
REGISTER

0100934001



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC HEALTH
REGISTRY OF VITAL RECORDS AND STATISTICS

CERTIFICATE OF MARRIAGE

This certificate must be delivered to the person before whom the marriage is to be contracted before he proceeds to solemnize the same

(State file number)

WINTHROP

(City or town making return)

Registered No. *82*Intention No. *84*

1 Place of Marriage

City or Town WINTHROP

(Do not enter name of village or section of city or town)

2 Date of Marriage June 24 1989

(Month) (Day) (Year)

3 FULL NAME

GROOM

Clifford Elmer George, Jr.

12 FULL NAME

BRIDE

Jacquelyn Ann Sullivan

3A SURNAME

AFTER MARRIAGE

George

12A SURNAME

AFTER MARRIAGE

George

4 DATE OF BIRTH

October 14 1967

5 OCCUPATION

Electrician

13 DATE OF BIRTH

May 18 1967

14 OCCUPATION

Customer Service Agent

6 RESIDENCE

NO. & ST.

55 Fremont St. #D

CITY/

TOWN

Winthrop St. MA ZIP CODE 02152

15 RESIDENCE

NO. & ST.

55 Fremont St. #D

CITY/

TOWN

Winthrop St. MA ZIP CODE 02152

7 NUMBER OF

MARRIAGE

(1st, 2nd, 3rd, etc.)

1st

8 WIDOWED

OR DIVORCED

16 NUMBER OF

MARRIAGE

(1st, 2nd, 3rd, etc.)

1st

17 WIDOWED

OR DIVORCED

9 BIRTHPLACE

WinthropMA

(City or town)

(State or country)

18 BIRTHPLACE

BostonMA

(City or town)

(State or country)

10 NAME OF

MOTHER (MAIDEN)

Thelka Janice Turner

19 NAME OF

MOTHER (MAIDEN)

Carolyn Catherine Galante

11 NAME OF

FATHER

Clifford Elmer George, Sr.

20 NAME OF

FATHER

Donald Sullivan

21 THE INTENTION OF MARRIAGE by the above-mentioned persons was duly entered by me in the records of the Community of

Winthrop

according to law, this

19th

day of

June1989☐ COURT WAIVER☐ AGE ORDER

Issued

June 22 1989

(Month) (Day) (Year)

by

Mari J. Lanes

(City or Town Clerk or Registrar)

22 I HEREBY CERTIFY that I joined the above-named persons in marriage at No. St. John the Evangelist Church St.,
(If marriage was solemnized in a church, give its NAME instead of street and number)Winthrop, Massachusetts 02152

on

June24th,1989

(Name of city or town)

(Month)

(Day)

(Year)

Signature

Michael J. HigginsOfficial station PriestRev. Michael J. Higgins

(Print or type name)

(Minister of the Gospel, Clergyman, Priest, Rabbi, or Justice of the Peace)

Residence No.

320 Winthrop Street

St., City or Town of

Winthrop, Massachusetts 02152

23 Certificate recorded by city or town clerk

JUN 30 1989

(Month)

(Day)

(Year)

Mari J. Lanes

CLERK OR REGISTRAR

- R.9 -

A TRUE COPY ATTEST:

Paul F. Sawyer
TOWN CLERK



Filed _____

JUL 18 2001

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

PROBATE & FAMILY COURT REGISTER
DOCKET NO. 01D-0934-DV1CLIFFORD E. GEORGE,
Plaintiff,

v.

JACQUELYN A. GEORGE,
Defendant.

ANSWER TO COMPLAINT FOR DIVORCE

1. The Defendant admits that she resides at 15 Short Street, Winthrop, Massachusetts, but denies that the Plaintiff resides there.

2. The Defendant admits the allegations contained in paragraph two.

3. The Defendant admits the allegations contained in paragraph three.

4. The Defendant admits the allegations contained in paragraph four.

5. The Defendant admits that the marriage is irretrievably broken down but denies that the irretrievable breakdown occurred on or about May 1, 2001.

Respectfully submitted,
JACQUELYN A. GEORGE,
By her Attorneys,
PEROCCHI & FERNANDEZ, LLP

By: _____

Patricia S. Fernandez
BBO#548054
401 Andover Street
North Andover, MA 01845
(978) 681-5454

Dated: July 16, 2001

N-R
11-25-02

[Handwritten signature]

[Handwritten signature]

Commonwealth of Massachusetts
The Trial Court

Suffolk Division

Probate and Family Court Department

Docket No. 01D 0934

Judgment of Divorce Nisi

CLIFFORD E. GEORGE, Plaintiff

of Winthrop in the County of Suffolk

v.

JACQUELYN A. GEORGE, Defendant

of Winthrop in the County of Suffolk

All persons interested having been notified in accordance with the law, and after hearing, it is adjudged nisi that a divorce from the bond of matrimony be granted the said plaintiff for the cause of irretrievable breakdown of the marriage as provided by Chapter 208, section 1B and that upon and after the expiration of ninety days from the entry of this judgment, it shall become and be absolute unless, upon the application of any person within such period, the Court shall otherwise order. It is further ordered that:

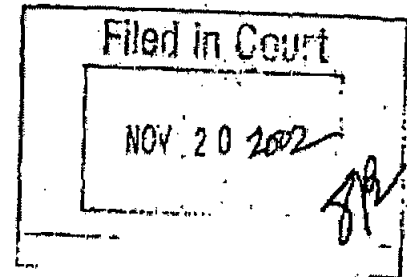
1. The separation agreement executed by the parties and approved by the Court on November 20, 2002 is approved as fair and reasonable and shall have the full force and effect of an order of this Court and is incorporated but not merged in this order and shall survive and remain as an independent contract.

Date November 20, 2002

- R. 11 -

[Handwritten signature]
JEREMY A. STAHLIN
JUSTICE OF THE PROBATE AND FAMILY COURT

SEPARATION AGREEMENT



AGREEMENT made this 20th day of November, 2002, between CLIFFORD E. GEORGE of Lynnfield, Essex County, Massachusetts, (hereinafter referred to as the "Husband") and JACQUELYN A. GEORGE of Winthrop, Suffolk County, Massachusetts (hereinafter referred to as the "Wife").

WITNESSETH THAT:

WHEREAS, the Husband and Wife were married in Winthrop, Massachusetts on June 24, 1989;

WHEREAS, the parties have had no children by their marriage;

WHEREAS, serious differences have arisen between the Husband and Wife; and the parties have been living separate and apart since May 23, 2001;

WHEREAS, the Husband has filed a Complaint for Divorce in the Suffolk Probate and Family Court (Docket No. Q1D 0934); and

WHEREAS, it is now desired and intended and by this instrument to make a final and complete settlement of all matters relating to property and estate rights in case of the death of either; all other rights and obligations arising from the marital relationship, current arrangements for alimony and all other matters which should be settled in view of the impending divorce petition.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter contained, it is mutually agreed between the Husband and Wife that:

1. Commencing with the date of this Agreement, the Husband and the Wife may live separate and apart from one another for the rest of their lives. Each party agrees to respect the privacy of the other. The parties do not intend to establish a restraining order.

2. The Husband and the Wife shall have the right to dispose of his or her property by Will or otherwise, in such manner as each may in his or her uncontrolled discretion deem proper, subject to the terms, conditions and obligations of this Agreement and neither one will claim any interest in the estate of the other, except to enforce any obligation imposed by this Agreement.

3. Except for any cause of action for divorce, or any enforcement of any Probate and Family Court Judgment concerning dissolution of the marital relationship, or to enforce the provisions of this Agreement in any Court, the Husband and the Wife mutually release and forever discharge each other from any and all actions, suits, debts, claims, demands and obligations whatsoever, both at law and in equity, which either of them has ever had, now has, or may hereafter have against the other, upon or by reason of any matter, cause or thing up to the date of this Agreement, including but not limited to claims against each other's property, it being the intention of the parties that henceforth there shall exist as between them only such rights and obligations as are specifically provided for in this Agreement.

4. The Wife shall perform the obligations of any contract and pay any debts, charges or liabilities entered into or incurred by her individually. The Wife warrants, represents and agrees that she has not contracted or incurred, and that she will not hereafter contract or incur any debts, charges or liabilities whatsoever in the Husband's name or for which the Husband, his legal representatives, or his property or estate will or may become liable. The Wife further covenants at all times to hold the Husband free, harmless and indemnified from and against all debts, charges and liabilities hereinbefore or hereafter contracted or incurred by her in breach of the provisions of this paragraph and from any and all reasonable attorneys' fees, costs and expenses incurred by the Husband as a result of any such breach.

5. The Husband shall perform the obligations of any contract and pay any debts, charges or liabilities entered into or incurred by him individually. The Husband warrants, represents and agrees that he has not contracted or incurred, and that he will not hereafter contract or incur any debts, charges or liabilities whatsoever in the Wife's name or for which the Wife, her legal representatives, or her property or estate will or may become liable. The



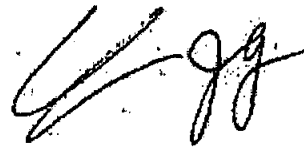
Husband further covenants at all times to hold the Wife free, harmless and indemnified from and against all debts, charges and liabilities hereinbefore or hereafter contracted or incurred by him in breach of the provisions of this paragraph and from any and all reasonable attorneys' fees, costs and expenses incurred by the Wife as a result of any such breach.

6. The provisions of the Agreement may not be changed or modified except by a written instrument signed and acknowledged in duplicate by the Husband and the Wife, or by an order or Judgment of Modification entered by the Suffolk Probate and Family Court.

7. A copy of this Agreement shall be submitted to the Court and incorporated in a Judgment of Divorce and shall be merged in the Judgment of Divorce. This Agreement shall retain no independent legal significance, except that the property division provisions referenced in Exhibit C shall survive the Judgment and be thereafter binding upon the parties.

8. The Husband and the Wife acknowledge that this Agreement contains the entire Agreement between the parties hereto and that there are no agreements, promises, terms, conditions or understandings and no representation or inducements leading to the execution hereof, expressed or implied, other than those herein set forth and that no oral statement or prior written matter extrinsic to this Agreement shall have any force or effect. The parties represent and acknowledge that each has fully described his or her income, assets and liabilities to the other party to the best of his or her knowledge and ability, both orally and otherwise and by the exchange of copies of current Probate Court Supplemental Rule 401 Financial Statements to be filed by each of them with the Suffolk Probate and Family Court which have been specifically relied on by the parties. Each party has carefully considered the financial resources, liabilities and expenses of the other and of themselves, and the within Agreement is executed based upon the said knowledge of each.

9. The Wife accepts the covenants of the Husband as set forth in this Agreement as a full and complete settlement of the Husband's obligations to provide her with an equitable division of property, and the Wife agrees to indemnify and hold the Husband harmless from and against any loss, cost or damage (including reasonable attorneys' fees) suffered by the Husband



is a result of any sums which the Husband is required to pay as a result of a breach of this Agreement by the Wife.

10. The Husband accepts the covenants of the Wife as set forth in this Agreement as a full and complete settlement of the Wife's obligations to provide him with an equitable division of property and the Husband agrees to indemnify and hold the Wife harmless from and against any loss, cost or damage (including reasonable attorneys' fees) suffered by the Wife as a result of any sums which the Wife is required to pay as a result of a breach of this Agreement by the Husband.

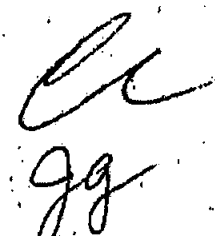
11. The parties acknowledge that they are entering into this Agreement freely and voluntarily; that they have ascertained and weighed all the facts and circumstances likely to influence their judgment herein; that they have had the opportunity to seek legal advice independently of each other; and that they clearly understand and assent to all the provisions hereof.

12. This instrument is executed and delivered in the Commonwealth of Massachusetts and shall be construed and take effect under and in accordance with the laws of said State.

13. This Agreement is executed in five (5) counterparts, each of which shall be deemed an original and all constituting together one and the same instrument, this being one of the counterparts.

14. The failure of the Husband or of the Wife to insist in any instance upon the strict performance of any of the terms hereof shall not be construed as a waiver of such term, and such term shall nevertheless continue in full force and effect.

15. Whenever called upon to do so by the other party, each party shall execute, acknowledge and deliver to or for the other party without consideration any and all deeds, assignments, bills of sale or other instruments necessary or convenient to carry out the provisions of this Agreement, or that may be required by the other party to sell, transfer, convey, encumber or otherwise dispose of any property now or hereafter owned by such other party.

Handwritten signature and initials, possibly 'Jg', in the bottom right corner.

16. There are annexed hereto and hereby made a part hereof Exhibits A, B, C, D, E and F. The Husband and Wife agree to be bound by, and to perform and carry out all the terms of the said Exhibits to the same extent as if each of said Exhibits was fully set forth in the text of this Agreement.

Signed this 20th day of November, 2002.


CLIFFORD E. GEORGE

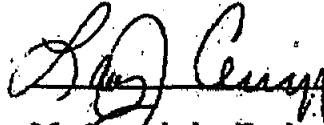

JACQUELYN A. GEORGE

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

November 20, 2002

Before me personally appeared CLIFFORD B. GEORGE and acknowledged his execution of the foregoing Agreement to be his free act and deed.

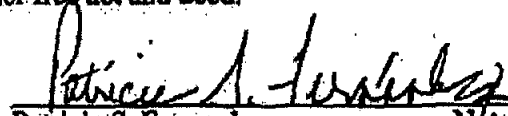

My Commission Expires: 02/07/2003 , Notary Public

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

November 20, 2002

Before me personally appeared JACQUELYN A. GEORGE and acknowledged her execution of the foregoing Agreement to be her free act and deed.


Patricia S. Fernandez , Notary Public
My Commission Expires: 7/18/08

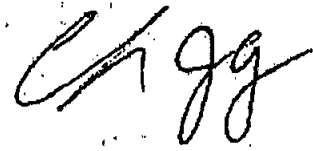


EXHIBIT "A"

ALIMONY

1. Commencing on the first day of the month following the execution of this Agreement and on the first of each month thereafter, the Husband shall pay to the Wife as alimony, for her support and maintenance, the sum of One Thousand Eight Hundred (\$1,800.00) Dollars per month. The payments called for by this paragraph and the Husband's obligation to pay alimony to the Wife shall terminate upon the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026.

2. All alimony payments required by Paragraph 1 above shall be includible in income by the Wife and deductible from income by the Husband on his or her federal and state income tax return.

3. In the event that the Wife receives a gift or inheritance which is in excess of Twenty Five Thousand (\$25,000.00) Dollars, she shall, within 7 days of her receipt thereof, notify the Husband of the amount she has received.

Handwritten signature

EXHIBIT "B"

MEDICAL INSURANCE AND UNINSURED MEDICAL EXPENSES

1. The Husband shall maintain, at his own expense, the Wife as a beneficiary of his current policy of medical insurance (or comparable policies) until the earliest to occur of: his death, her death or her remarriage or July 30, 2026, at which point his obligation will terminate. The Husband agrees that he will not take or approve any action to cancel such insurance coverage. In the event that the Wife is no longer eligible for coverage pursuant to this Paragraph 1 (because, for example, the Husband remarries) but may continue to be covered on a rider at an additional cost, she shall remain eligible and the Husband shall pay any such additional cost. In the event that the Wife is no longer eligible for coverage through the Husband's employer or former employer, either party may file a Complaint for Modification to request that the Probate Court determine how the cost of the policy should be paid. Until a determination is made by the Probate Court, the Husband shall pay any and all costs associated with an individual health insurance policy for the Wife which is comparable to the medical coverage he is now providing. The provisions of Exhibit B, Paragraph 1 shall be deemed to satisfy the requirements of M.G.L. ch. 175, §110I and M.G.L. ch. 208, §34.

2. Upon written request by the Wife, the Husband shall forthwith deliver evidence of the health insurance coverage required by him for the Wife.

3. The Husband shall be solely responsible for those medical and dental expenses of his not paid for or reimbursed by the medical insurance in effect for him at any time after the date of the execution of this Agreement and shall not seek contribution on account of such expenses from the Wife.

4. The Wife shall be solely responsible for those medical and dental expenses of hers not paid for or reimbursed by the medical insurance in effect for her at any time after the



date of the execution of this Agreement and shall not seek contribution on account of such expenses from the Husband.

99
41

EXHIBIT "C"

DIVISION OF PROPERTY

REAL PROPERTY:

1. (a) The Husband and Wife own the land and building located at 15 Short Street, Winthrop, Massachusetts (the "Premises"). The parties represent that they have not encumbered the Premises except by a first mortgage of approximately One Hundred Sixteen Thousand (\$116,000.00) Dollars.

(b) Commencing on the first day of the month following the date of the execution of Wife shall be responsible for and shall pay all of the expenses in connection with the Premises, including but not limited to: principal and interest on the existing first mortgage, home owner's insurance and real estate taxes, utilities and maintenance and repair.

(c) Simultaneously with the execution of this Agreement, the Husband shall execute and deliver a quitclaim deed to the Wife conveying all of his right, title and interest in and to the Premises to her, subject to the mortgage and home equity line;

PERSONAL PROPERTY:

2. The Husband hereby releases to the Wife any right, title or interest he may have in the following property which is to be retained and owned exclusively by the Wife:

- (a) The account standing in her name at Fleet Bank;
- (b) The furniture and furnishings in the Premises;
- (c) The automobile in the Wife's name.

4. The Wife hereby releases to the Husband any right, title or interest she may have in the following property which is to be retained and owned exclusively by the Husband:

- (a) Two timeshares at Disney World owned with his siblings;
- (b) The personal property now in his possession;

99
OK

- (c) His Individual Retirement Account at Fidelity;
- (d) His interest in the Northeast Electric Retirement Plan;
- (e) His interest in Northeast Electric, Inc.
- (f) His checking and savings accounts at Fleet bank;
- (g) His stock in Fidelity;
- (h) The cash surrender value in three life insurance policies in his name with MFA and MML, subject to the provisions of Exhibit B below;
- (i) The Mako 25 boat.

5. Within six (6) months from the date of execution of this Agreement, the Husband shall pay to the Wife the sum of Three Thousand Five Hundred (\$3,500.00) Dollars to effectuate an equitable division of the assets.

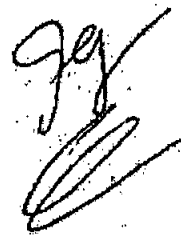


EXHIBIT "D"

MISCELLANEOUS

1. The Husband and Wife acknowledge and agree that neither shall make any claim against the other for counsel fees or expert witness fees in connection with the negotiation and drafting of this Agreement or any divorce proceedings initiated by either of them or resulting in a Judgment Nisi incorporating the terms of the within Agreement, and the parties further agree that each shall bear the cost, be solely responsible for and shall pay the costs and fees of the attorneys, appraisers and other experts retained by them respectively.

2. (a) Wife's Debts: The Wife shall be fully responsible for and shall pay any and all liabilities incurred by her, including legal fees and any other debt.

(b) Husband's Debts: The Husband shall be fully responsible for and shall pay any and all liabilities incurred by him, including attorneys' fees and any other debt.

gg
W

EXHIBIT "E"
LIFE INSURANCE

1. The Husband shall maintain in full force and effect the employment-related life insurance on his life having a death benefit no less than Three Hundred Thousand (\$300,000.00) Dollars, the proceeds of which shall be payable to the Wife. The Husband's obligation to maintain said life insurance shall terminate upon the Wife's death, the Husband's death, the Wife's remarriage or July 30, 2026.

2. Upon a request by the Wife, the Husband shall provide evidence annually that the life insurance policy(s) is in full force and effect.

gg
cl

EXHIBIT "F"

INCOME TAXES

1. Each party represents and warrants to the other to have duly paid all income taxes, state and federal, on all joint returns heretofore filed by the parties; that to each party's knowledge no interest or penalties are due and owing with respect thereto on income earned by each, no tax deficiency proceeding is pending or threatened thereon, and no audit thereof is pending.

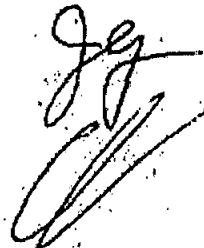
2. If there is a deficiency assessment in connection with any of the aforesaid returns (heretofore or hereafter filed), the party responsible shall notify the other immediately in writing. He or she shall pay the amount ultimately determined to be due thereon, together with interest and penalties, and any expenses that may be incurred if he or she decides to contest the assessment.

3. The party responsible shall in all respects indemnify the other against, and hold him or her harmless from, any deficiency assessment or tax liens arising out of any joint return heretofore or hereafter filed by the parties, as well as any damages and expenses whatsoever in connection therewith. Each shall keep the other fully informed of any and all steps taken by him or her with respect to a deficiency assessment.

4. The term "party responsible" shall mean that party who is in equity and good conscience responsible for any tax deficiency or lien. If both parties are equally responsible, they shall share equally the responsibility for any defense or payment.

5. If there is a refund on any of the aforesaid returns, it shall belong to both parties equally.

6. For calendar year 2002, in the event that the parties do not file a joint Federal income tax return, the Husband shall be entitled to claim the real estate tax and mortgage interest deductions for all months in which he paid said expenses, prior to the date that the alimony obligation pursuant to Exhibit A commenced. Beginning with the month in which the Wife receives her first alimony obligation and begins to pay the mortgage, she shall be entitled to claim the real estate tax and mortgage interest deduction.



Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department
COMPLAINT FOR MODIFICATION

Division Suffolk

Probate and Family Court Department

Docket No. 01D0934

CLIFFORD E. GEORGE, Plaintiff v. JACQUELYN A. GEORGE, Defendant

1. Plaintiff resides at 18 Mulberry Lane Pelham Hillsborough
(Street Address) (City / Town) (County)
NH 03076 ; defendant resides at 15 Short Street
(State) (Zip) (Street Address)
Walpole Suffolk MA
(City / Town) (County) (State) (Zip)

2. This Court, on November 20, 2002 entered a judgment ordering that
(Date)

The Husband shall execute and deliver a quitclaim deed to the Wife conveying all of his right, title, and interest...subject to the mortgage; the Husband shall maintain, at his own expense, the Wife as a beneficiary of his current plan of medical insurance; and the Husband shall pay alimony of \$1,800 per month, to terminate upon the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026.

3. Since that date,

☐ there is now a difference between the amount of the existing child support order and the amount that would result from application of the Child Support Guidelines issued by the Chief Justice for Administration and Management.

☒ the following change(s) in circumstance have occurred:

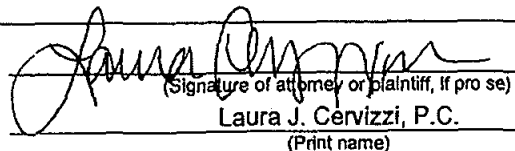
The cost of health insurance has increased over 100% of original cost, and the Defendant has obtained a Medicare policy; the Plaintiff's ability to secure credit on behalf of his business has been negatively impacted by the Wife's refusal to refinance the mortgage in her name, and her refusal to refinance to obtain a lower interest rate; and pursuant to the term limits of the Alimony Reform Act, MGL c. 208 s. 49, the term of alimony has now expired due to the length of the parties' marriage. Also, the Plaintiff has remarried and has a child, and the cost of alimony and health insurance coverage have become prohibitively expensive.

4. Wherefore, plaintiff requests that the Court order the judgment of November 20, 2002
(Date)

be modified by:

Allowing the Plaintiff to terminate coverage of health insurance on behalf of the Defendant; ordering that the Defendant refinance and remove the Plaintiff's name from the mortgage for the former marital home, ordering a termination of alimony, and all such other relief that this Honorable Court finds just and equitable.

Date August 19, 2013


(Signature of attorney or plaintiff, if pro se)
Laura J. Cervizzi, P.C.
(Print name)

Park Place South, 350 Park Street, Suites 201 & 203
(Street address)

North Reading MA 01864
(City/Town) (State) (Zip)

Tel. No. 978-276-0777

B.B.O. # 553836

Amended complaint

Commonwealth of Massachusetts

The Trial Court

Division Suffolk

Probate and Family Court Department

Docket No. 01D0934

COMPLAINT FOR MODIFICATION

CLIFFORD E. GEORGE, Plaintiff v. JACQUELYN A. GEORGE, Defendant

1. Plaintiff resides at 18 Mulberry Lane Pelham Hillsborough
(Street Address) (City / Town) (County)
NH 03076 ; defendant resides at 15 Short Street
(State) (Zip) (Street Address)
Winthrop Suffolk MA 02152
(City / Town) (County) (State) (Zip)

2. This Court, on November 20, 2002 entered a judgment ordering that
(Date)

The Husband shall execute and deliver a quitclaim deed to the Wife conveying all of his right, title, and interest...subject to the mortgage; the Husband shall maintain, at his own expense, the Wife as a beneficiary of his current plan of medical insurance; and the Husband shall pay alimony of \$1,800 per month, to terminate upon the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026.

3. Since that date,

☐ there is now a difference between the amount of the existing child support order and the amount that would result from application of the Child Support Guidelines issued by the Chief Justice for Administration and Management.

☒ the following change(s) in circumstance have occurred:

The cost of health insurance has increased over 100% of original cost, and the Defendant has obtained a Medicare policy; the Plaintiff's ability to secure credit on behalf of his business has been negatively impacted by the Wife's refusal to refinance the mortgage in her name, and her refusal to refinance to obtain a lower interest rate; and pursuant to the term limits of the Alimony Reform Act, MGL c. 208 s. 49, the term of alimony has now expired due to the length of the parties' marriage. Also, the Plaintiff has remarried and has a child, and the cost of alimony and health insurance coverage have become prohibitively expensive.

4. Wherefore, plaintiff requests that the Court order the judgment of November 20, 2002
(Date)

be modified by:

Allowing the Plaintiff to terminate coverage of health insurance on behalf of the Defendant; ordering that the Defendant refinance and remove the Plaintiff's name from the mortgage for the former marital home, ordering a termination of alimony, and all such other relief that this Honorable Court finds just and equitable.

Date August 19, 2013

Laura J. Cervizzi
(Signature of attorney or plaintiff, if pro se)
Laura J. Cervizzi, P.C.
(Print name)

Park Place South, 350 Park Street, Suites 201 & 203
(Street address)

North Reading MA 01864
(City/Town) (State) (Zip)

Tel. No. 978-276-0777

B.B.O. # 553836



**COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT**

SUFFOLK, ss

Docket No.: 01 D 0934

CLIFFORD GEORGE
Plaintiff

v.

JACQUELYN A. GEORGE
Defendant

**DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR
MODIFICATION AND DEFENSES**

Now comes the Defendant, Jacqueline George, through her counsel, Attorney Alessandra Petruccelli, Esq., and ANSWERS as follows:

1. Defendant admits the allegations contained in paragraph one of the Plaintiff's Complaint for Modification.
2. Defendant admits the allegations contained in paragraph two of the Complaint for Modification.
3. Defendant denies the allegations contained in paragraph three of the Plaintiff's Complaint for Modification.
4. Defendant denies the allegations of paragraph four and requests that this Honorable Court deny all claims of the Plaintiff and requests that the matter be dismissed with prejudice. In addition, the Defendant denies that the Plaintiff is able to prove the requisite burden of proof in this case, calls upon him to prove a substantial change in circumstances in this case, and claims that the parties had an agreement which she performed after the execution of the separation agreement, all to be proven at trial.

DEFENSES:

1. Plaintiff's claims are barred due to accord and satisfaction;
2. Plaintiff's claims are barred due to estoppel;
3. Plaintiff's claims are barred due to waiver;
4. Plaintiff's claims are barred in conjunction with M.G.L. c. 208 §34, 48-55;
5. Plaintiff's claims fail to state a claim for which relief can be granted.

WHEREFORE, the Defendant, Jacquelyn George respectfully requests:

1. Dismiss the Plaintiff's Complaint for Modification;
2. Order that the Plaintiff pay all of Defendant's attorney's fees and costs relative to the defense of this action;
3. Any and all other remedies at law available to the Defendant.

Dated: NOVEMBER 5, 2013

Respectfully submitted.

DEFENDANT, JACQUELYN
GEORGE

By her Attorney,



Alessandra E. Petruccelli

Attorney for Plaintiff
Law Office of Alessandra Petruccelli
1216 Bennington Street
East Boston, Massachusetts 02128
617-567-7750 Telefax: 617-567-4070


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Defendant's Answer to Plaintiff's Complaint with Defenses was this day served upon Plaintiff, Clifford E. George by mailing same, first class postage prepaid, to Laura J. Cervizzi, Esq., Attorney for Plaintiff, of Park Place South, 350 Park Street, Suite 201 & 203, North Reading, Massachusetts 01864.

SIGNED under the pains and penalties of perjury.

Dated:

November 5, 2013



Alessandra Petruccelli

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #01D0934

Clifford E. George

PLAINTIFF

v.

Jacquelyn A. George,

DEFENDANT

PLAINTIFF'S PRE-TRIAL CONFERENCE MEMORANDUM

This Pre-Trial Memorandum is submitted by the Plaintiff, Clifford E. George (hereinafter "Former Husband"), in the above-captioned matter, in accordance with the Pre-trial Notice and Order of this Court assigning the Complaint for Modification filed on or about September 23, 2013 for a Pre-Trial Conference to be held May 8, 2014, at Suffolk Probate and Family Court, before Judge Stahlin. Counsel and the parties participated in negotiations in an effort to resolve this matter; however, they were unable to settle the issues pending before the Court.

TRIAL COUNSEL

Plaintiff's Trial Counsel

Laura Messier, Esq.
Cervizzi and Associates
350 Park Street
Park Place South, Suites 201 & 203
North Reading, Massachusetts 01864
(978) 276-0777

Defendant's Trial Counsel

Alessandra Petruccelli, Esq.
1216 Bennington Street
East Boston, MA 02128
(617) 567-7750

A. MEETING

The parties met for a settlement conference on April 23, 2014 at the office of Defendant's counsel. Present at the meeting were the Plaintiff, Clifford George, Plaintiff's counsel, the Defendant, Jacquelyn A. George (hereinafter "Former Wife"), and Defendant's counsel. The parties engaged in settlement discussions, but have been unable to resolve the outstanding issues.

B. UNCONTESTED FACTS

1. The Parties were married in Winthrop, Massachusetts on June 24, 1989 and divorced November 20, 2002. The parties were married for thirteen (13) years.
2. There are no minor or dependent children of the marriage.
3. The former Husband currently resides at 18 Mulberry Lane, Pelham, New Hampshire.
4. The Former Wife currently resides at 15 Short Street, Winthrop, Massachusetts (the former marital home).
5. The Husband filed a Complaint for Modification on or about September 23, 2013.

C. CONTESTED ISSUES OF FACT AND LAW

Health Insurance

Pursuant to the parties' Separation Agreement dated November 20, 2002, the Former Husband was to maintain, at his own expense, the Former Wife as a single health insurance plan. To comply with the Separation Agreement, the Former Husband arranged for the Former Wife to remain on a group health insurance policy as an employee with a single plan. The Former Wife has health insurance through Medicare, specifically Medicare Part A (hospital insurance) and Medicare Part B (health insurance). She also receives Supplemental Security Income. The plan provided by the former husband was a secondary plan only. Since the divorce the former wife has obtained and receives limited benefits through MassHealth.

Since the parties were divorced, the costs associated with continuing coverage of the Former Wife's health insurance have become increasingly expensive for the Former Husband (almost 400% of the original cost, from just over \$100 per month at the time of divorce to \$485.00 per month today), and therefore an unreasonable cost to him. Additionally, due to recent health insurance requirement changes, it is anticipated that the Former Husband's costs will increase by approximately fourteen percent (14%). When the court makes an order for alimony on behalf of a spouse, which has occurred in the instant case, the Court shall determine whether the obligor under such order has health insurance or other coverage available to him through an employer or organization or has health insurance or other coverage available to him at a reasonable cost that may be extended to cover the spouse for whom support is ordered. M.G.L. c. 208, §34; see also *Zeh v. Zeh*, 35 Mass.App.Ct. 260, 267, 618 N.E.2d 1376, 1381 (1993).

Since the Former Wife currently utilizes the Medicare benefits, is eligible for MassHealth benefits, and uses the health insurance provided by the Former Husband for supplemental purposes, it is the Former Husband's position that his requirement to provide health insurance to the Former Wife be terminated.

Refinance of Mortgage on Former Marital Home

Since the parties' divorce, the Former Husband has remained on the mortgage, but his name is removed from the deed. The Former Wife is responsible for payment of the mortgage. Initially, the Former Wife paid the mortgage directly, but, after the Former Wife missed several payments, the parties agreed that the Husband would pay the mortgage directly, with the remaining alimony payment directly to the Wife.

During the parties' marriage, and since the parties' divorce in 2002, the Husband has owned and operated Northeast Electrical Inc., which provides electrical services for residential, commercial, and industrial clients. The Former Husband founded this company in 1994. As evidenced in the Former Husband's tax returns, the company has experienced a significant downturn in recent years. Additionally, the Former Husband requires an extensive amount of equipment to ensure his company is able to meet the demands of the industry. Despite request by the Former Husband, the Former Wife has refused to refinance the current mortgage on the former marital home to a lower interest rate. As a result, the Former Husband's ability to secure credit on behalf of his business to make purchases needed for the continued operation of his business is negatively impacted. The Husband is seeking for the Wife to refinance the mortgage in her own name.

A refinance of the mortgage will benefit both parties, by removing the Former Husband's name on the mortgage which will benefit the operation of his business and reducing the monthly loan payments paid by the Former Wife, if she extends the term of the loan. Since the monthly loan payments being paid by the Former Wife will be reduced, a refinance will reduce her weekly expense.

Termination of Alimony

Per the parties' Separation Agreement, the Former Husband is required to pay alimony to the Former Wife in the amount of \$1,800.00 per month. Since the parties' divorce, the Alimony Reform Act has been implemented, which places term limits on alimony based on the length of marriage of the parties. In relevant part, if the length of the marriage is 10 – 15 years, the length of alimony shall not exceed 70% of the number of months of the marriage. M.G.L. c. 208, §49.

In the instant case, the parties were married for 13 years, or 160 months, which, in turn, dictates that alimony ends after 112 months (70% of 160 months), or March 20, 2012.

Further, since the Former Husband's Complaint for Modification requesting modification of multiple terms of the Separation Agreement, and which requests for relief did not solely rely on the durational limits, the Former Husband's claim for modification of alimony is properly before this Court. Thus, the Court "is obligated under §4(b) to modify the divorce judgment so that the duration of alimony did not exceed the limit established in G.L. c. 208, §49(b)(4)." Holmes v. Holmes, 467 Mass. 653, 661 (2014).

The Former Wife claims that she has a continuing need for alimony based on her declining health. However, the Wife does have substantial resources at her disposal. She has \$40,000 in her bank accounts. She has also had the same boyfriend for nine years (and recently posted on social media that she received a diamond ring for their nine year anniversary). While the Former Wife claims that she is non cohabitating with her partner, they do spend substantial time together and are holding themselves out to the public in a committed relationship. Additionally, the Wife has acknowledged that she recently received an offer on the former marital home, which has equity of approximately \$196,874.

Revenues from the Husband's businesses have markedly declined in recent years, and his income has declined, as well. Additionally, the Husband has remarried and is the sole provider for his wife and their son. The Husband also has health concerns, namely skin cancer, which affect his ability to work.

Consistent with the Alimony Reform Act, the Former Husband's alimony obligation ended on March 20, 2012, thus it is the Husband's position that he has overpaid in the amount of \$43,200.00, and should be entitled to relief, in the form of cessation of alimony.

D. CUSTODY

Not applicable.

E. DISCOVERY

A discovery deadline has not been determined. The Plaintiff served a Request for Production of Documents on or about October 24, 2013, to which the Defendant responded on or about December 9, 2013. The Defendant served a Request for Production of Documents and Interrogatories on or about December 9, 2013, to which the Plaintiff responded on or about February 4, 2014.

F. POTENTIAL WITNESSES

1. Clifford E. George, Plaintiff;
2. Jacquelyn A. George, Defendant;
3. Gordan Malony CPA
4. Frank Vozella, Manager, Northern Bank and Trust
5. George Barker, Credit Manager, Good Brothers Dodge GM
6. Others as yet unascertained, but the right to amend this list prior to trial is hereby reserved.

G. EXHIBITS

1. Financial Statements of the Husband and Wife;
2. Income Tax Returns of the Husband and Wife;
3. Documents relating to cost and availability of health insurance;
4. Documents relating to refinance of real property; and
5. Others as yet unascertained, but the right to introduce additional exhibits at trial and to amend this list prior thereto is hereby reserved.

H. DEPOSITIONS

There have been no depositions conducted in this matter.

I. TRIAL TIME

Trial time is estimated to be one (1) day.

J. FINANCIAL STATEMENTS

The Husband's Supplemental Rule 401 Financial Statement is filed herewith which reflects his current income, assets and liabilities.

K. CHILD SUPPORT AND HEALTH INSURANCE

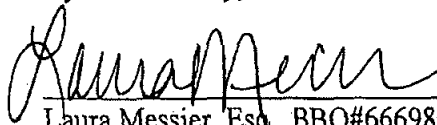
Child Support not applicable. Please see contested issues regarding health insurance.

Dated: May 5, 2014

Respectfully submitted.

Clifford E. George,

By His Attorney,



Laura Messier, Esq., BBO#666980

Cervizzi & Associates

Attorney for Plaintiff

350 Park Street

Park Place South, Suite 201

North Reading, MA 01864

Phone: (978) 276-0777/ Fax: (978) 276-0778

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET NO: 01 D 0934

Clifford George,
Plaintiff,

v.

Jacquelyn George,
Defendant,

PRE TRIAL MEMORANDUM OF DEFENDANT RELATIVE TO THE PLAINTIFF'S
COMPLAINT FOR MODIFICATION AND HER COUNTERCLAIMS

THIS PRE-TRIAL MEMORANDUM is submitted by Defendant, Jacquelyn George in regard to the above entitled action.

PARTIES AND COUNSEL

Names, addresses and telephone numbers of Parties and Counsel are as follows:

Name of Defendant:

Jacquelyn George

Address of Defendant:

15 Short Street
Winthrop MA 02152

Telephone: _____

Name of Defendant's Attorney:

Alessandra Petruccelli, Esq.

Address of Defendant's Attorney:

1216 Bennington Street
East Boston, MA 02128

Telephone: 617-567-7750

Name of Plaintiff:

Clifford George

Address of Plaintiff:

18 Mulberry Lane
Pelham, Hillsborough, NH 03076

Telephone: _____

Name of Plaintiff's Attorney:

Laura Messier, Esq.

Address of Plaintiff's Attorney:

350 Park Street, Suites 201 & 203
North Reading, MA 01864

Telephone: 978-276-0777

GENERAL DESCRIPTION OF CLAIMS AND DEFENSES OF THE PARTIES

1. The following pleadings were filed:

Complaint for Modification Requesting that the Alimony Order be terminated, the Health Insurance Order be terminated, and requesting that the Defendant refinance the former marital home to remove the Plaintiffs name from the mortgage.

2. The grounds for the original Complaint are:

The Plaintiff asserts that there has been a change in circumstances as *"the health insurance has increased 100% of the original cost, the Plaintiff's ability to secure credit on behalf of his business has been negatively impacted by the Wife's refusal to refinance the mortgage in her own name, and her refusal to refinance to obtain a lower interest rate, and pursuant to the terms of the Alimony Reform Act, MGL c. 208 §49 the term of alimony has now expired due to the length of the parties' marriage. Also the Plaintiff has remarried and has a child, and the cost of alimony and health insurance coverage (sp) have become prohibitively expensive."*

3. The Defendant filed an Answer And Defenses.

4. The grounds for the Answer and Defenses are as follows:

"The Defendant denies the allegations contained in the Plaintiff's complaint, calls upon him to prove a substantial change in circumstances and claims that the parties had an agreement which she performed after the execution of the agreement, all to be proven at trial. Further, the Defendant maintains that the Plaintiff's claims are barred due to estoppel, waiver, accord and satisfaction, are barred in conjunction with the Alimony Reform Act MGL c. 208 §34 & §49-55, and that the complaint fails to state a claim for which relief can be granted." The Defendant requests attorney's fees and costs, and requests that the Plaintiff's complaint be dismissed.

UNCONTESTED FACTS

It is anticipated that the following facts will NOT be contested at trial:

1. The Husband and Wife were married on June 24, 1989 and were divorced on November 20, 2002;
2. The parties entered into a separation agreement on November 20, 2002;

3. The parties were both represented by counsel;
4. The parties agreed in their separation agreement that each would perform the obligations contained within the agreement, and that it was an equitable division of property;
5. According to Exhibit A, "Alimony" *"commencing the first day of the month following the execution of this Agreement and on the first of each month thereafter, the Husband shall pay to the Wife as alimony, for her support and maintenance, the sum of One Thousand Eight Hundred (\$1800.00) Dollars per month...The Husband's obligation to pay alimony to the Wife shall terminate upon the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage, or July 30, 2026."*
6. According to Exhibit B, "Medical Insurance and Uninsured Medical Expenses" *"the Husband shall maintain, at his own expense, the Wife as a beneficiary of his current policy of medical insurance (or comparable policies) until the earliest to occur of: his death, her death or remarriage or July 30, 2026 at which point his obligation will terminate. The Husband agrees that he will not take or approve any action to cancel such coverage. In the event that the Wife is no longer eligible for coverage pursuant to this Paragraph 1 (because for example, the Husband remarries) but may continue to be covered on a rider at an additional cost, she shall remain eligible and the Husband shall pay any such additional cost."*
7. According to Exhibit C, "Division of Property" *"the Wife shall be responsible for and pay all the expenses in connection with the Premises (marital home) including but not limited to: principal and interest on the existing first mortgage, home owners insurance and taxes, utilities maintenance and repair." "simultaneously with the execution of this Agreement, the Husband shall execute and deliver a quitclaim deed to the Wife conveying all his right, title and interest in and to the Premises to her, subject to the mortgage and home equity line"*
8. According to Exhibit C, "Division of Property" *"the Wife hereby releases to the Husband any right, title or interest she may have in the following property which is to be retained and owned exclusively by the Husband:*
 - a. *Two timeshares at Disney World owned with his siblings;*
 - b. *The personal property now in his possession;*
 - c. *His Individual Retirement Account at Fidelity;*
 - d. *His interest in Northeast Electric Retirement Plan;*
 - e. *His interest in Northeast Electric, INC;*
 - f. *His checking and savings accounts at Fleet Bank;*
 - g. *His stock at Fidelity;*
 - h. *The cash surrender value in three life insurance policies in his name with MFA and MML;*
 - i. *The Mako 25 boat;*
 - j. *Real Property located at 1200 Salem Street Unit 144, with a fair market value of \$350,000.00.*
8. On November 20, 2002 the Plaintiff submitted a financial statement to the Probate Court and signed the financial statement with the following certification: "certifying under the penalties of perjury that the information stated on this Financial Statement and attached Schedules if

any is complete, true and accurate. I understand that willful misrepresentation of any of the information provided will subject me to sanction and may result in criminal charges being filed against me."

9. The financial statement filed by the Plaintiff in 2002 does not state a value for his Northeast Retirement Plan;
10. The financial statement filed by the Plaintiff in 2002 does not state a value for his business, Northeast Electric, INC. The Financial statement only mentions he has 55% ownership interest;

CONTESTED ISSUES OF FACT

Whether there has been a substantial change in circumstances warranting modification?

Whether the Plaintiff's claims fail as a matter of law?

Whether the Plaintiff's finances have decreased?

Whether the Defendant's health has worsened since the time of the divorce?

CONTESTED ISSUES OF LAW

Whether GL c. 208 § 49-55 promulgated in 2011 (The Alimony Reform Act) can be a vehicle for the Plaintiff to modify the contract entered into in 2002?

Whether there has been a substantial change in circumstances financially warranting a modification to the terms of the parties' separation agreement executed on November 20, 2002?

Whether the Plaintiff's complaint for modification should be dismissed as a matter of law?

Whether the Plaintiff should pay attorney's fees and costs to the Defendant for the defense of this action pursuant to GL c. 208 §38?

STATUS OF DISCOVERY

The Plaintiff has served the Defendant with Request for Production of Documents and the Defendant has responded to same. The Defendant has served the Plaintiff with Interrogatories and Requests for Production of documents and the Defendant has responded to same. The Defendant needs additional discovery relative to the assets of the Plaintiff, the availability of insurance to the Plaintiff, the value of the Plaintiff's business and contracts and the value of his property.

SCHEDULE OF EXHIBITS

The Plaintiff intends to introduce the following exhibits at trial:

1. Financial Statement of the Plaintiff dated November 20, 2002;
2. The Separation Agreement of the parties executed and submitted to the court on November 20, 2002;
3. The Financial statement of the Plaintiff dated May 8, 2014;
4. The Financial statement of the Plaintiff dated May 8, 2014;
5. Income Tax returns of the Plaintiff for 2010, 2011, 2012 and 2013;
6. Business records for Northeast Electric, Inc.

The Defendant reserves the right to introduce additional exhibits after completion of discovery.

LIST OF WITNESSES

The Plaintiff intends to call the following witnesses at trial:

Plaintiff;
Defendant;
Business valuator;

The Defendant has not made a final determination regarding who she may call for witnesses in the trial of this matter and reserves the right to seasonably supplement this response.

The Defendant reserves the right to call rebuttal witnesses at trial as necessary.

LIST OF EXPERT WITNESSES

The Plaintiff has not made a determination as to whether she is going to retain an expert witness at trial.

CURRENT FINANCIAL STATEMENT

A current Financial Statement of the Plaintiff is submitted herewith pursuant to Rule 401 of the Supplemental Rules of the Probate Court.

ESTIMATE OF TRIAL TIME

The Plaintiff anticipates that the trial of this matter will take two days.

DEFENDANT'S OFFER OF PROOF:

The Defendant maintains that the Plaintiff's complaint for modification fails. The Defendant maintains that the Plaintiff has not demonstrated a substantial change in circumstances, and has not established any point in his modification. The parties were divorced in 2002. The parties, with the assistance of counsel drafted a separation agreement by which the parties agreed to numerous items and most importantly agreed to property division and alimony.

At the time of the divorce, the Plaintiff's financial statement indicated that he was earning \$85,800.00 per year. At that time, he agreed to a set alimony payment for a FIXED period of time and in exchange, for waivers of significant assets owned by the Plaintiff. In addition, at the time of the divorce, the Defendant had significant medical issues and as such, the Plaintiff agreed to pay for the Defendant's health insurance in consideration thereof, for a fixed period. The fixed period, as contemplated by the parties was until JULY 30, 2026. The fixed period on the alimony, was until July 30, 2026- the same. The parties did not choose that date at random. The parties chose that date because it was the date for which the mortgage on the marital home matured. The parties SPECIFICALLY contemplated these dates for a reason, the Defendant was unable to work at that time, and as an asset division under G.L. c. 208 §34, the parties agreed to alimony payments as well as a division of assets wherein the Plaintiff retained almost all assets with the exception of the marital home.

The ONLY substantial changes that have occurred since the time of the divorce are those that support continued alimony, (even an increase) and continued health insurance coverage. Since the time of the divorce the following changes have occurred:

1. The Defendant's health has significantly worsened. Prior to the divorce, during the marriage, she had 3 back surgeries that had caused her to be in great pain. The Plaintiff was well aware of her medical issues and problems at the time of the marriage during the marriage and at the time of the divorce. Since the time of the divorce, the Defendant has had 5 hip surgeries, (4 of which were severe with complete hip displacia) a hip replacement, in total 7 more surgeries from the time of the divorce. The Defendant has also been diagnosed with allodyna caused by medication intake for numerous years due to extreme pain.
2. Since the time of the divorce, the Plaintiff's assets and income have increased dramatically. At the time of the divorce, for example the Plaintiff had \$5,505.00 in his IRA as listed on his financial statement. At the present, the Plaintiff has \$471,000.00 in his IRA.
3. Since the time of the divorce, the Plaintiff has purchased and now owns 2 pieces of real property, his home in Pelham, NH and a vacation home.
4. Since the time of the divorce, the Plaintiff's income has doubled in years, and has increased overall substantially. In 2010, his gross earnings were \$200,000.00; in 2011, \$222,000.00, in 2012 \$100,983.00, and in 2013 his income was \$141,696.00.
5. Just income from his W2 in 2013 (not including business income) was \$141,696.00.
6. Since the time of the divorce, the Plaintiff has become the President, Vice President, Treasurer and Secretary of the corporation, Northeast Electrical, Inc. He owns the company.
7. According to the Profit and Loss provided by Northeast Electrical, Inc. from the Plaintiff, in 2013, the company earned \$3,447,674.83 in ordinary income. The company spent \$1,581,362.52 in salaries.
8. Since the time of the divorce, the Defendant's income situation has remained the same.
9. Since the time of the divorce, the Defendant's health has significantly declined.

The Plaintiff attempts to set forth the contention that the new Alimony Reform Act, effective March 1, 2012, promulgated at G.L. c. 208 §49-53, should terminate the Plaintiff's alimony order as the term limits have expired. The Plaintiff's argument and claim should be dismissed as a matter of law. The Act expressly provides that its application shall be prospective only, not retroactive. Acts of 2011, Ch. 124, sec. 4(a) ("Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered before March 1, 2012 shall

terminate only under such judgments, under subsequent modification or as otherwise provided for in this act." Emphasis added).

The Defendant maintains that the Plaintiff's complaint's must be dismissed and that fees should be awarded under MGL. c. 208 §38.

Respectfully submitted,
Jacquelyn George,
By her Attorney,


Attorney Alessandra E. Petruccelli
Law Offices of Petruccelli & Foster
1216 Bennington Street
East Boston, Massachusetts 02128
BBO# 653963

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Defendant's Pre-Trial Memorandum was this day served upon Plaintiff VIA EMAIL and in HAND day of hearing, May 8, 2014.

SIGNED under the pains and penalties of perjury.

Dated: May 6, 2014


Alessandra E. Petruccelli, Esq.

Commonwealth of Massachusetts
The Trial Court

Suffolk Division

Probate and Family Court Department

Docket No. 01D 0934

Temporary Order

Clifford E. George, Plaintiff

v.


Jacquelyn A. George, Defendant

(On a Complaint for Modification filed 8/26/13 as Amended)

Pending a hearing on the merits or until further order of the court, it is ordered that:

1. There is no remaining issue in the case relating to property division.
2. There is no remaining issue in the case relating to health insurance.
3. All discovery shall be completed within 60 days.
4. Further pre-trial conference is scheduled for July 10, 2014, at 9:00 a.m.
5. On July 10, 2014, the parties shall submit an agreed statement of facts and briefs, and the Court shall decide the remaining alimony issue based upon those submissions.

Date May 8, 2014


JEREMY A. STAHLIN
JUSTICE OF THE PROBATE AND FAMILY COURT

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #01D0934

Clifford E. George

PLAINTIFF

v.

Jacquelyn A. George,

DEFENDANT

JOINT UNCONTESTED STATEMENT OF FACTS

1. The Parties were married in Winthrop, Massachusetts on June 24, 1989.
2. The Parties were divorced on November 20, 2002.
3. The parties were married for thirteen (13) years.
4. There are no minor or dependent children of the marriage.
5. The Former Husband filed a Complaint for Modification on or about September 23, 2013, seeking to terminate health insurance coverage, remove his name from the mortgage on the former marital home, and terminate alimony.
6. The Former Wife filed an Answer to the Former Husband's Complaint for Modification on November 5, 2013.
7. The Pre-trial in this matter occurred on May 8, 2014. After Pre-trial the only remaining issue on Plaintiff's Complaint for Modification is Alimony pursuant to MGL c. 208 §49.
8. The Plaintiff claims that that alimony should terminate based on the durational limits set forth in MGL c. 208 §49.
9. According to the parties' separation agreement, Exhibit A, the Former Husband was to pay alimony to the Wife until the death or remarriage of the Wife, until the death of the Husband or until July 30, 2026.
10. The former Husband currently resides at 18 Mulberry Lane, Pelham, New Hampshire, with his wife and their child. This property has a fair market value of \$450,000.00,

according to Zillow.com with an outstanding mortgage of \$280,000.00. The Former Husband also owns a vacation home jointly with his wife, which has a fair market value of \$350,000.00 according to Zillow.com and an outstanding mortgage of \$162,000.00.

11. The Former Wife currently resides at 15 Short Street, Winthrop, Massachusetts (the former marital home), which has a fair market value of \$294,000.00 according to Zillow.com and outstanding mortgage of \$86,000.00.

12. The Former Husband is the owner of Northeast Electric Inc. and one-third of Northeast Solar Service (DBA Revolusun).

13. The Former Husband receives W-2 earnings from Northeast Electric. The Former Husband received no income from Northeast Solar Service (DBA Revolusun). In 2012, the Company took a \$40,000 loss. In 2013, the Company had earnings of \$17,000. The Former Husband reinvested his share into the company.

14. The Former Wife was unemployed at the time of the divorce in November 2002 as she was disabled;

15. The Former Wife is unemployed and receiving disability income as she is disabled;

16. The Former Husband is currently responsible for the cost of health insurance for himself and the Former Wife (the cost of the Former Wife's coverage is \$488 per month) and his prayer for modification of the health insurance obligation was denied by this Court on May 8, 2014.

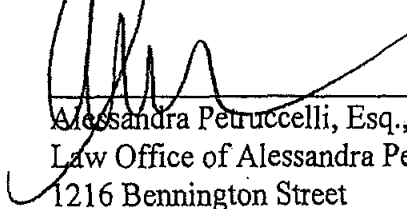
Respectfully submitted,
Clifford E. George,
By His Attorney,



Laura Messier, Esq., BBO#666980
Cervizzi & Associates
Attorney for Plaintiff
350 Park Street
Park Place South, Suite 201
North Reading, MA 01864
Phone: (978) 276-0777/ Fax: (978) 276-0778

Dated: July 10, 2014

Respectfully Submitted,
Jacquelyn A. George,
By Her Attorney,



Alessandra Petruccelli, Esq., BBO# 653963
Law Office of Alessandra Petruccelli
1216 Bennington Street
East Boston, MA 02128
Phone: (617) 567-7750

Dated: July 10, 2014

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #01D0934

Clifford E. George

PLAINTIFF

v.

Jacquelyn A. George,

DEFENDANT

PLAINTIFF'S MEMORANDUM OF LAW

NOW COMES the Plaintiff, Clifford E. George (hereinafter "Former Husband") and submits the within Memorandum of Law, in compliance with the Temporary Order of this Court issued on May 8, 2014.

I. BRIEF STATEMENT OF FACTS

The parties were divorced on November 20, 2002 following a thirteen year marriage. Per the parties' Separation Agreement, the Former Husband is required to pay alimony to the Defendant, Jacquelyn A. George (hereinafter "Former Wife") in the amount of \$1,800.00 per month until death of either party, the remarriage of the Wife, or July 30, 2026, whichever occurs earliest. *See Exhibit A, Separation Agreement dated November 20, 2002, page 7 "Exhibit A—Alimony."* This provision merged in the Judgment of Divorce entered on November 20, 2002. *See Exhibit A, Separation Agreement dated November 20, 2002, page 7, paragraph 7.*

Since the parties' divorce, the Alimony Reform Act (hereinafter "The Act") has been implemented, which places term limits on alimony based on the length of marriage of the parties. The Act, along with other material changes in circumstances regarding a refinance of the loan on the former marital home and issues regarding health insurance, warranted the Former Husband's filing of Complaint for Modification on August 19, 2013.

The parties and counsel attended a pre-trial conference on May 8, 2014. Following the pre-trial conference, the Court issued a Temporary Order stating that there is no remaining issue as to

property division and health insurance. The Court also scheduled a further pre-trial conference, at which time the parties shall submit briefs upon which the Court shall decide the remaining alimony issue. *See Exhibit B, Temporary Order dated May 8, 2014.*

II. ISSUE

Whether the Former Husband's alimony obligation should be terminated pursuant to the Alimony Reform Act.

III. BRIEF ANSWER

The Former Husband's obligation to pay alimony should have ended on March 20, 2012 under the Alimony Reform Act. Pursuant to M.G.L. c. 208, §49, the length of alimony shall not exceed 70% of the number of months of the marriage. Thus, since the parties were married for 13 years (160 months), Massachusetts law dictates that alimony shall end after 112 months (70% of 160 months), or March 20, 2012.

IV. LEGAL DISCUSSION

1. **Standard for Modification and Application of Duration Limits under Alimony Reform Act**

To be successful in an action to modify a judgment for alimony or child support, the petitioner must demonstrate a material change of circumstances since the entry of the earlier judgment. Schuler v. Schuler, 382 Mass. 366, 368 (1981). The Act specifically addresses the issue of modification of existing support judgment, allowing for the retroactive application of the durational limits as set forth in the Act. Specifically, Section 4(b) states that "existing alimony judgments that exceed the durational limits of section 49 of said chapter 208 shall be deemed a material change of circumstance that warrant modification." This language clearly shows that the legislature intended the temporal reach of the statute to include non-surviving judgments in effect as of the enactment of the Statute, allowing the Court to apply the durational limits to judgment entered prior to March 1, 2012.

The Act sets forth specific guidelines regarding the duration of general term alimony, and Section 4(b) of the Act states that "existing alimony awards shall be deemed general term alimony." In pertinent part, "if the length of the marriage is fifteen years or less, but more than ten years, general term alimony shall continue for not longer than 70 per cent of the number of months of the marriage." M.G.L. c. 208, §49(a). In the instant case, the parties were married for 13 years, or 160 months, which, in turn, dictates that alimony ends after 112 months (70% of 160 months), or March 20, 2012.

The Act provides for a deviation from the durational limits only "upon a written finding by the court that deviation beyond the limits of this section are required in the interests of justice." M.G.L. c. 208, §49(b). The Former Wife has argued a continuing need for alimony based on her declining health. The Former Wife had health concerns throughout the marriage, which were exacerbated by severe eating disorders as well as addiction to alcohol and prescription and pain pills and other drugs, for which she sought repeated treatment throughout the marriage. Even if the Court did consider the Former Wife's declining health argument, the Wife has substantial resources at her disposal, including \$40,000.00 in her bank accounts. The Wife received SSDI income (which has increased since the date of divorce, from \$680 per month to approximately \$1,200 per month), she stands to receive substantial inheritance from father, and according to her Financial Statement, she carries only \$750 in debt. The equity in the former marital home (which she retained in the Separation Agreement) totals approximately \$208,000. The Wife has acknowledged that she recently received an offer to purchase the home (which is not listed for sale). Further, the Former Wife has been in a relationship with the same man for nine years (and recently posted on social media that she received a diamond ring for their nine year anniversary).

Given that the Former Husband's statutory alimony obligation ended on March 20, 2012, the Husband's has actually overpaid in the amount of \$43,200.00. Deviation from the Act would result in substantial injustice to the Former Husband by way of overpayment. As a result, the Former Husband should be entitled to relief, in the form of cessation of alimony.

2. Ripeness of Claim

Section 5 of the Act provides a timeline for the filing of "any complaint for modification filed by a payor under section 4 of this act *solely* because of the existing alimony judgment exceeds the durational limits of section 49." *Emphasis added.* This Section states that "payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015."

The application of the Section 5 timelines is addressed in Holmes v. Holmes, 467 Mass. 653, 661 (2014). The Holmes case involved a complaint for modification filed by the payee spouse as to the amount of alimony and a counterclaim filed by the payor spouse in regards to the duration of alimony ordered by the trial court judge. The Court considered the timelines in a footnote, writing that "the complaint for modification in this case was filed by the recipient spouse (wife) not the payor spouse (husband) and the husband's counterclaim was not based solely on the

absence of a durational limit in the divorce judgment" finding that, as such, the trial court judge "was obligated under §4(b) to modify the divorce judgment so that the duration of alimony did not exceed the limit established in G.L. c. 208, §49(b)(4), unless the judge found that deviation from the durational limit was warranted" *Id. at FN 9*.

In the instant case, the Former Husband raised multiple claims in his complaint in regards to continued health insurance coverage and his obligations under the mortgage. As the Former Husband's Complaint for Modification requesting modification of multiple terms of the Separation Agreement, and requests for relief did not solely rely on the durational limits, this Complaint for Modification is properly before the Court.

Further, the application of Section 5 would produce an inequitable result. While the body of the Act makes clear that alimony obligation terminated on March 20, 2012 (eleven days after the Act took effect), Section 5 suggests that the Former Husband would be responsible for paying alimony for three years following the enactment of the Act. Calculating alimony at \$21,600 per annum (\$1,800 multiplied by twelve months), this would result in overpayment of alimony in the amount of \$64,800 if he were compelled to wait until March 1, 2015 to file his claim to terminate support..

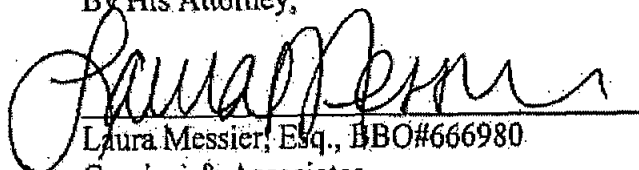
V. CONCLUSION

The Former Husband's obligation to pay alimony ended on March 20, 2012. To require the Husband to continue to pay alimony after his legal obligation to do so ended on March 20, 2012, is prejudicial.

WHEREFORE, the Plaintiff requests that this Honorable Court terminate the Former Husband's obligation to pay alimony and for such other relief as this Honorable Court deems just and equitable.

Dated: July 10, 2014

Respectfully submitted.
Clifford E. George,
By His Attorney,



Laura Messier, Esq., BBO#666980

Cervizzi & Associates

Attorney for Plaintiff

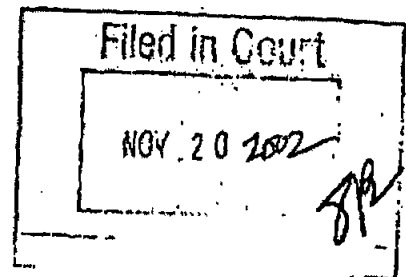
350 Park Street

Park Place South, Suite 201

North Reading, MA 01864

Phone: (978) 276-0777/ Fax: (978) 276-0778

SEPARATION AGREEMENT



AGREEMENT made this 20th day of November, 2002, between CLIFFORD E. GEORGE of Lynnfield, Essex County, Massachusetts, (hereinafter referred to as the "Husband") and JACQUELYN A. GEORGE of Winthrop, Suffolk County, Massachusetts (hereinafter referred to as the "Wife").

WITNESSETH THAT:

WHEREAS, the Husband and Wife were married in Winthrop, Massachusetts on June 24, 1989;

WHEREAS, the parties have had no children by their marriage;

WHEREAS, serious differences have arisen between the Husband and Wife; and the parties have been living separate and apart since May 23, 2001;

WHEREAS, the Husband has filed a Complaint for Divorce in the Suffolk Probate and Family Court (Docket No. Q1D 0934); and

WHEREAS, it is now desired and intended and by this instrument to make a final and complete settlement of all matters relating to property and estate rights in case of the death of either; all other rights and obligations arising from the marital relationship, current arrangements for alimony and all other matters which should be settled in view of the impending divorce petition.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter contained, it is mutually agreed between the Husband and Wife that:

1. Commencing with the date of this Agreement, the Husband and the Wife may live separate and apart from one another for the rest of their lives. Each party agrees to respect the privacy of the other. The parties do not intend to establish a restraining order.

[Handwritten signature] 99

2. The Husband and the Wife shall have the right to dispose of his or her property by Will or otherwise, in such manner as each may in his or her uncontrolled discretion deem proper, subject to the terms, conditions and obligations of this Agreement and neither one will claim any interest in the estate of the other, except to enforce any obligation imposed by this Agreement.

3. Except for any cause of action for divorce, or any enforcement of any Probate and Family Court Judgment concerning dissolution of the marital relationship, or to enforce the provisions of this Agreement in any Court, the Husband and the Wife mutually release and forever discharge each other from any and all actions, suits, debts, claims, demands and obligations whatsoever, both at law and in equity, which either of them has ever had, now has, or may hereafter have against the other, upon or by reason of any matter, cause or thing up to the date of this Agreement, including but not limited to claims against each other's property, it being the intention of the parties that henceforth there shall exist as between them only such rights and obligations as are specifically provided for in this Agreement.

4. The Wife shall perform the obligations of any contract and pay any debts, charges or liabilities entered into or incurred by her individually. The Wife warrants, represents and agrees that she has not contracted or incurred, and that she will not hereafter contract or incur any debts, charges or liabilities whatsoever in the Husband's name or for which the Husband, his legal representatives, or his property or estate will or may become liable. The Wife further covenants at all times to hold the Husband free, harmless and indemnified from and against all debts, charges and liabilities hereinbefore or hereafter contracted or incurred by her in breach of the provisions of this paragraph and from any and all reasonable attorneys' fees, costs and expenses incurred by the Husband as a result of any such breach.

5. The Husband shall perform the obligations of any contract and pay any debts, charges or liabilities entered into or incurred by him individually. The Husband warrants, represents and agrees that he has not contracted or incurred, and that he will not hereafter contract or incur any debts, charges or liabilities whatsoever in the Wife's name or for which the Wife, her legal representatives, or her property or estate will or may become liable. The

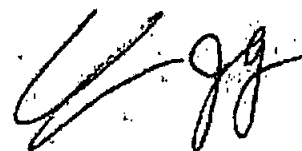
Husband further covenants at all times to hold the Wife free, harmless and indemnified from and against all debts, charges and liabilities hereinbefore or hereafter contracted or incurred by him in breach of the provisions of this paragraph and from any and all reasonable attorneys' fees, costs and expenses incurred by the Wife as a result of any such breach.

6. The provisions of the Agreement may not be changed or modified except by a written instrument signed and acknowledged in duplicate by the Husband and the Wife, or by an order or Judgment of Modification entered by the Suffolk Probate and Family Court.

7. A copy of this Agreement shall be submitted to the Court and incorporated in a Judgment of Divorce and shall be merged in the Judgment of Divorce. This Agreement shall retain no independent legal significance, except that the property division provisions referenced in Exhibit C shall survive the Judgment and be thereafter binding upon the parties.

8. The Husband and the Wife acknowledge that this Agreement contains the entire Agreement between the parties hereto and that there are no agreements, promises, terms, conditions or understandings and no representation or inducements leading to the execution hereof, expressed or implied, other than those herein set forth and that no oral statement or prior written matter extrinsic to this Agreement shall have any force or effect. The parties represent and acknowledge that each has fully described his or her income, assets and liabilities to the other party to the best of his or her knowledge and ability, both orally and otherwise and by the exchange of copies of current Probate Court Supplemental Rule 401 Financial Statements to be filed by each of them with the Suffolk Probate and Family Court which have been specifically relied on by the parties. Each party has carefully considered the financial resources, liabilities and expenses of the other and of themselves, and the within Agreement is executed based upon the said knowledge of each.

9. The Wife accepts the covenants of the Husband as set forth in this Agreement as a full and complete settlement of the Husband's obligations to provide her with an equitable division of property, and the Wife agrees to indemnify and hold the Husband harmless from and against any loss, cost or damage (including reasonable attorneys' fees) suffered by the Husband



as a result of any sums which the Husband is required to pay as a result of a breach of this Agreement by the Wife.

10. The Husband accepts the covenants of the Wife as set forth in this Agreement as a full and complete settlement of the Wife's obligations to provide him with an equitable division of property and the Husband agrees to indemnify and hold the Wife harmless from and against any loss, cost or damage (including reasonable attorneys' fees) suffered by the Wife as a result of any sums which the Wife is required to pay as a result of a breach of this Agreement by the Husband.

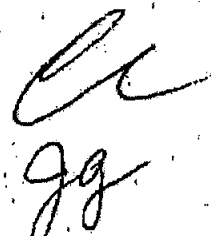
11. The parties acknowledge that they are entering into this Agreement freely and voluntarily; that they have ascertained and weighed all the facts and circumstances likely to influence their judgment herein; that they have had the opportunity to seek legal advice independently of each other; and that they clearly understand and assent to all the provisions hereof.

12. This instrument is executed and delivered in the Commonwealth of Massachusetts and shall be construed and take effect under and in accordance with the laws of said State.

13. This Agreement is executed in five (5) counterparts, each of which shall be deemed an original and all constituting together one and the same instrument, this being one of the counterparts.

14. The failure of the Husband or of the Wife to insist in any instance upon the strict performance of any of the terms hereof shall not be construed as a waiver of such term, and such term shall nevertheless continue in full force and effect.

15. Whenever called upon to do so by the other party, each party shall execute, acknowledge and deliver to or for the other party without consideration any and all deeds, assignments, bills of sale or other instruments necessary or convenient to carry out the provisions of this Agreement, or that may be required by the other party to sell, transfer, convey, encumber or otherwise dispose of any property now or hereafter owned by such other party.



16. There are annexed hereto and hereby made a part hereof Exhibits A, B, C, D, E and F. The Husband and Wife agree to be bound by, and to perform and carry out all the terms of the said Exhibits to the same extent as if each of said Exhibits was fully set forth in the text of this Agreement.

Signed this 20th day of November, 2002.


CLIFFORD E. GEORGE

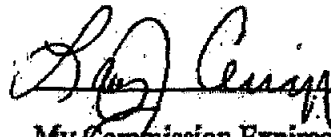

JACQUELYN A. GEORGE

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

November 20, 2002

Before me personally appeared CLIFFORD E. GEORGE and acknowledged his execution of the foregoing Agreement to be his free act and deed.

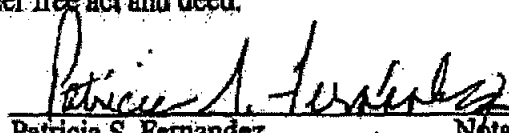

My Commission Expires: 02/07/2003 Notary Public

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

November 20, 2002

Before me personally appeared JACQUELYN A. GEORGE and acknowledged her execution of the foregoing Agreement to be her free act and deed.


Patricia S. Fernandez, Notary Public
My Commission Expires: 7/18/08

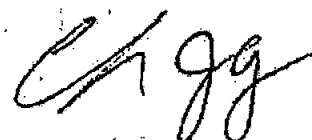


EXHIBIT "A"

ALIMONY

1. Commencing on the first day of the month following the execution of this Agreement and on the first of each month thereafter, the Husband shall pay to the Wife as alimony, for her support and maintenance, the sum of One Thousand Eight Hundred (\$1,800.00) Dollars per month. The payments called for by this paragraph and the Husband's obligation to pay alimony to the Wife shall terminate upon the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026.

2. All alimony payments required by Paragraph 1 above shall be includible in income by the Wife and deductible from income by the Husband on his or her federal and state income tax return.

3. In the event that the Wife receives a gift or inheritance which is in excess of Twenty Five Thousand (\$25,000.00) Dollars, she shall, within 7 days of her receipt thereof, notify the Husband of the amount she has received.

CH gg

EXHIBIT "B"

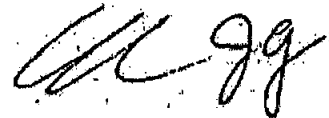
MEDICAL INSURANCE AND UNINSURED MEDICAL EXPENSES

1. The Husband shall maintain, at his own expense, the Wife as a beneficiary of his current policy of medical insurance (or comparable policies) until the earliest to occur of: his death, her death or her remarriage or July 30, 2026, at which point his obligation will terminate. The Husband agrees that he will not take or approve any action to cancel such insurance coverage. In the event that the Wife is no longer eligible for coverage pursuant to this Paragraph 1 (because, for example, the Husband remarries) but may continue to be covered on a rider at an additional cost, she shall remain eligible and the Husband shall pay any such additional cost. In the event that the Wife is no longer eligible for coverage through the Husband's employer or former employer, either party may file a Complaint for Modification to request that the Probate Court determine how the cost of the policy should be paid. Until a determination is made by the Probate Court, the Husband shall pay any and all costs associated with an individual health insurance policy for the Wife which is comparable to the medical coverage he is now providing. The provisions of Exhibit B, Paragraph 1 shall be deemed to satisfy the requirements of M.G.L. ch. 175, §110I and M.G.L. ch. 208, §34.

2. Upon written request by the Wife, the Husband shall forthwith deliver evidence of the health insurance coverage required by him for the Wife.

3. The Husband shall be solely responsible for those medical and dental expenses of his not paid for or reimbursed by the medical insurance in effect for him at any time after the date of the execution of this Agreement and shall not seek contribution on account of such expenses from the Wife.

4. The Wife shall be solely responsible for those medical and dental expenses of hers not paid for or reimbursed by the medical insurance in effect for her at any time after the



date of the execution of this Agreement and shall not seek contribution on account of such expenses from the Husband.

99
41

EXHIBIT "C"

DIVISION OF PROPERTY

REAL PROPERTY:

1. (a) The Husband and Wife own the land and building located at 15 Short Street, Winthrop, Massachusetts (the "Premises"). The parties represent that they have not encumbered the Premises except by a first mortgage of approximately One Hundred Sixteen Thousand (\$116,000.00) Dollars.

(b) Commencing on the first day of the month following the date of the execution of Wife shall be responsible for and shall pay all of the expenses in connection with the Premises, including but not limited to: principal and interest on the existing first mortgage, home owner's insurance and real estate taxes, utilities and maintenance and repair.

(c) Simultaneously with the execution of this Agreement, the Husband shall execute and deliver a quitclaim deed to the Wife conveying all of his right, title and interest in and to the Premises to her, subject to the mortgage and home equity line;

PERSONAL PROPERTY:

2. The Husband hereby releases to the Wife any right, title or interest he may have in the following property which is to be retained and owned exclusively by the Wife:

- (a) The account standing in her name at Fleet Bank;
- (b) The furniture and furnishings in the Premises;
- (c) The automobile in the Wife's name.

4. The Wife hereby releases to the Husband any right, title or interest she may have in the following property which is to be retained and owned exclusively by the Husband:

- (a) Two timeshares at Disney World owned with his siblings;
- (b) The personal property now in his possession;

99
CC

- (c) His Individual Retirement Account at Fidelity;
- (d) His interest in the Northeast Electric Retirement Plan;
- (e) His interest in Northeast Electric, Inc.
- (f) His checking and savings accounts at Fleet bank;
- (g) His stock in Fidelity;
- (h) The cash surrender value in three life insurance policies in his name with MFA and MML, subject to the provisions of Exhibit B below;
- (i) The Mako 25 boat.

5. Within six (6) months from the date of execution of this Agreement, the Husband shall pay to the Wife the sum of Three Thousand Five Hundred (\$3,500.00) Dollars to effectuate an equitable division of the assets.

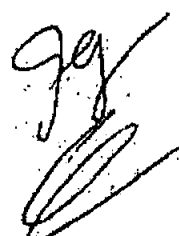


EXHIBIT "D"

MISCELLANEOUS

1. The Husband and Wife acknowledge and agree that neither shall make any claim against the other for counsel fees or expert witness fees in connection with the negotiation and drafting of this Agreement or any divorce proceedings initiated by either of them or resulting in a Judgment Nisi incorporating the terms of the within Agreement, and the parties further agree that each shall bear the cost, be solely responsible for and shall pay the costs and fees of the attorneys, appraisers and other experts retained by them respectively.

2. (a) Wife's Debts: The Wife shall be fully responsible for and shall pay any and all liabilities incurred by her, including legal fees and any other debt.

(b) Husband's Debts: The Husband shall be fully responsible for and shall pay any and all liabilities incurred by him, including attorneys' fees and any other debt.

99
11

EXHIBIT "E"

LIFE INSURANCE

1. The Husband shall maintain in full force and effect the employment-related life insurance on his life having a death benefit no less than Three Hundred Thousand (\$300,000.00) Dollars, the proceeds of which shall be payable to the Wife. The Husband's obligation to maintain said life insurance shall terminate upon the Wife's death, the Husband's death, the Wife's remarriage or July 30, 2026.

2. Upon a request by the Wife, the Husband shall provide evidence annually that the life insurance policy(s) is in full force and effect.

gg
cl

EXHIBIT "F"

INCOME TAXES

1. Each party represents and warrants to the other to have duly paid all income taxes, state and federal, on all joint returns heretofore filed by the parties; that to each party's knowledge no interest or penalties are due and owing with respect thereto on income earned by each, no tax deficiency proceeding is pending or threatened thereon, and no audit thereof is pending.

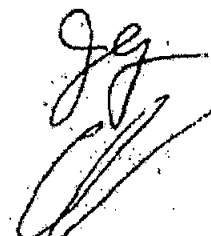
2. If there is a deficiency assessment in connection with any of the aforesaid returns (heretofore or hereafter filed), the party responsible shall notify the other immediately in writing. He or she shall pay the amount ultimately determined to be due thereon, together with interest and penalties, and any expenses that may be incurred if he or she decides to contest the assessment.

3. The party responsible shall in all respects indemnify the other against, and hold him or her harmless from, any deficiency assessment or tax liens arising out of any joint return heretofore or hereafter filed by the parties, as well as any damages and expenses whatsoever in connection therewith. Each shall keep the other fully informed of any and all steps taken by him or her with respect to a deficiency assessment.

4. The term "party responsible" shall mean that party who is in equity and good conscience responsible for any tax deficiency or lien. If both parties are equally responsible, they shall share equally the responsibility for any defense or payment.

5. If there is a refund on any of the aforesaid returns, it shall belong to both parties equally.

6. For calendar year 2002, in the event that the parties do not file a joint Federal income tax return, the Husband shall be entitled to claim the real estate tax and mortgage interest deductions for all months in which he paid said expenses, prior to the date that the alimony obligation pursuant to Exhibit A commenced. Beginning with the month in which the Wife receives her first alimony obligation and begins to pay the mortgage, she shall be entitled to claim the real estate tax and mortgage interest deduction.



Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET NO: 01 D 0934

Clifford George,
Plaintiff,

v.

Jacquelyn George,
Defendant,

SUBMISSION OF THE DEFENDANT, JACQUELYN GEORGE IN SUPPORT OF HER
OPPOSITION TO PLAINTIFF'S REQUEST TO TERMINATE ALIMONY

BACKGROUND:

- a. On September 23, 2013, the Plaintiff filed a complaint for modification. In that complaint he requested modification of several terms of the separation agreement that the parties entered into in November of 2002.
- b. He requested that the alimony provision of the parties' separation agreement be terminated solely because it exceeded the durational limits set out in Section 49 of MGL c. 208;
- c. That the health insurance order be terminated;
- d. That the Defendant refinance the former marital home to remove the Plaintiff's name from the mortgage.
- e. Specifically, the Plaintiff prayed: *"the health insurance has increased 100% of the original cost, the Plaintiff's ability to secure credit on behalf of his business has been negatively impacted by the Wife's refusal to refinance the mortgage in her own name, and her refusal to refinance to obtain a lower interest rate, and pursuant to the terms of the Alimony Reform Act, MGL c. 208 §49 the term of alimony has now expired due to the length of the parties' marriage. Also the Plaintiff has remarried and has a child, and the cost of alimony and health insurance overage (sp) have become prohibitively expensive."*

- f. The Defendant duly answered and counterclaimed as follows: *"The Defendant denies the allegations contained in the Plaintiff's complaint, calls upon him to prove a substantial change in circumstances and claims that the parties had an agreement which she performed after the execution of the agreement, all to be proven at trial. Further, the Defendant maintains that the Plaintiff's claims are barred due to estoppel, waiver, accord and satisfaction, are barred in conjunction with the Alimony Reform Act MGL c. 208 §34 & §49-55, and that the complaint fails to state a claim for which relief can be granted."* The Defendant requests attorney's fees and costs, and requests that the Plaintiff's complaint be dismissed.
- g. The parties conducted discovery, and on May 8, 2014 had a pretrial hearing.
- h. After hearing, the court determined that all of the prayers of the Plaintiff, except for the termination of alimony based on the Plaintiff's assertion that the alimony provision in the parties agreement were moot and that there was not a substantial change or facts that could support the Plaintiff's contentions.
- i. The court found that the Plaintiff's financial circumstances had in fact improved and that his claim regarding increased health insurance cost were not reason to terminate or reduce the claims in his modification action;
- j. The Court found that there was no order in the underlying separation agreement relative to refinancing the former marital home, and that the facts and circumstances claimed by the Plaintiff were not sufficient to warrant a modification action;
- k. The Court ordered that the parties make submissions on the alimony issue which was the Plaintiff's only remaining claim of his Complaint for Modification.

ARGUMENT RELATIVE TO ALIMONY

The Plaintiff's Modification of the Alimony provision of the parties' separation agreement fails as a matter of law. The parties were married on June 24, 1989 and were divorced on November 20, 2002. The parties were married for THIRTEEN years. At the time of the divorce the parties entered into a separation agreement. Both parties were represented by counsel, and the Plaintiff had the same attorney that is representing him in this action. The parties agreed in their separation agreement that each would perform the obligations contained within the agreement,

and that it was an equitable division of property. According to Exhibit A of the parties separation agreement entitled, "Alimony" "*commencing the first day of the month following the execution of this Agreement and on the first of each month thereafter, the Husband shall pay to the Wife as alimony, for her support and maintenance, the sum of One Thousand Eight Hundred (\$1800.00) Dollars per month...The Husband's obligation to pay alimony to the Wife shall terminate upon the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage, or July 30, 2026.*" See Exhibit A, attached hereto and incorporated herein. According to Exhibit C of the separation agreement entitled, "Division of Property" "*the Wife shall be responsible for and pay all the expenses in connection with the Premises (marital home) including but not limited to: principal and interest on the existing first mortgage, home owners insurance and taxes, utilities maintenance and repair;*" "*simultaneously with the execution of this Agreement, the Husband shall execute and deliver a quitclaim deed to the Wife conveying all his right, title and interest in and to the Premises to her, subject to the mortgage and home equity line*" See Exhibit B, attached hereto and incorporated herein. According to Exhibit C of the separation agreement entitled, "Division of Property" "*the Wife hereby releases to the Husband any right, title or interest she may have in the following property which is to be retained and owned exclusively by the Husband:*

- a. *Two timeshares at Disney World owned with his siblings;*
- b. *The personal property now in his possession;*
- c. *His Individual Retirement Account at Fidelity;*
- d. *His interest in Northeast Electric Retirement Plan;*
- e. *His interest in Northeast Electric, INC,*
- f. *His checking and savings accounts at Fleet Bank;*
- g. *His stock at Fidelity;*
- h. *The cash surrender value in three life insurance policies in his name with MFA and MML;*
- i. *The Mako 25 boat;*
- j. *Real Property located at 1200 Salem Street Unit 144, with a fair market value of \$350,000.00.*

On November 20, 2002 the Plaintiff submitted a financial statement to the Probate Court and signed the financial statement with the following certification: "*certifying under the penalties of perjury that the information stated on this Financial Statement and attached Schedules if any is complete, true and accurate. I understand that willful misrepresentation of any of the information provided will subject me to sanction and may result in criminal charges being filed against me.*" See Exhibit C, attached hereto and incorporated herein.

The financial statement filed by the Plaintiff in 2002 does not state a value for his Northeast Retirement Plan. The financial statement filed by the Plaintiff in 2002 does not state a value for

his business, Northeast Electric, INC. The Financial statement only mentions he has 55% ownership interest. *See Exhibit C*, attached hereto and incorporated herein.

The Alimony Reform Act of 2011 which amends MGL c. 208 became effective as of March 1, 2012. The Act reformed Alimony in the Commonwealth of Massachusetts and made numerous changes to the Law, including establishing categories of alimony, set out principles by which the amount and maximum durational limits of each category of alimony are to be determined, and set out guidelines about the termination and suspension of alimony awards. The act also changed the interplay between property division and alimony awards; directing the courts and litigants that alimony judgments are to be made under the operative provisions of the new sections 48-55 as of March 1, 2012. The Act preserves the authority of the court to deviate from the statutory limits on the duration and amount of both general term and rehabilitative alimony. Section (53) provides that the court may deviate from the duration and amount limits with respect to those two forms of alimony upon written findings that such deviation is "necessary." Section 49(b), which concerns general term alimony only, states that the court may deviate beyond the time limits set forth in that section upon written findings that the deviation is necessary and in the interest of justice. Under section 5 of the Act, modification actions filed solely because existing alimony judgments exceed the duration limits set out in Section 49 may ONLY be filed within the following time limits: "on or AFTER March 1, 2015, if the parties were married fifteen (15) years or less but more than ten years."

In the case at bar the Plaintiff has filed a modification of the ALIMONY SOLELY based on the durational limits of section 49 of the Alimony Reform Act. (See Plaintiff's Complaint for Modification). The Plaintiff states this contention in his complaint for modification. The Plaintiff has attempted to try to cloud the issue by claiming that his modification should succeed as he moved to modify other things as well as alimony. That fails as a matter of law. The Plaintiff's other prayers (which were denied relief outright by this Court at Pretrial) have nothing to do with alimony. They are completely separate issues, and should not have been filed in the first place as there was no basis in the law and fact presented by the Plaintiff. The Plaintiff is now attempting to circumvent the clear statutory parameters by claiming that his modification action had other unrelated counts, therefore, as it was not just a modification of the alimony pursuant to MGL c. 49 that he does not need to follow the statutory requirements. That argument is without merit and should be dismissed. The Plaintiff is not seeking to terminate alimony on ANY OTHER basis other than the durational limits. The statute is clear, as the

parties were married for 13 years, the Plaintiff may not file such an action UNTIL MARCH 1, 2015. The Plaintiff filed this action on September 23, 2013 almost two years before the statute allows.

Even were the Plaintiff able to bring this action in conjunction with the statute, modification in this case is not just, and deviation beyond the limits set forth in the Act is clearly in the interest of justice. The parties were divorced in 2002. The parties, with the assistance of counsel drafted a separation agreement by which the parties agreed to numerous items and most importantly agreed to property division and alimony. At the time of the divorce, the Plaintiff's financial statement indicated that he was earning \$85,800.00 per year. At that time, he agreed to a set alimony payment for a FIXED period of time and in exchange, for waivers of significant assets owned by the Plaintiff. In addition, at the time of the divorce, the Defendant had significant medical issues and as such, the Plaintiff agreed to pay for the Defendant's health insurance in consideration thereof, for a fixed period. The fixed period, as contemplated by the parties was until JULY 30, 2026. The fixed period on the alimony, was until July 30, 2026- the same. The parties did not choose that date at random. The parties chose that date because it was the date for which the mortgage on the marital home matured. The parties SPECIFICALLY contemplated these dates for a reason, the Defendant was unable to work at that time, and as an asset division under G.L. c. 208 §34, the parties agreed to alimony payments as well as a division of assets wherein the Plaintiff retained almost all assets with the exception of the marital home. The Defendant's health was a significant factor at the time of the divorce and at the time the parties made the agreements contained therein. Since that time, the Defendant's health has significantly worsened. Prior to the divorce, during the marriage, she had 3 back surgeries that had caused her to be in great pain. The Plaintiff was well aware of her medical issues and problems at the time of the marriage during the marriage and at the time of the divorce. Since the time of the divorce, the Defendant has had 5 hip surgeries, (4 of which were severe with complete hip dislocation) a hip replacement, in total 7 more surgeries from the time of the divorce. The Defendant has also been diagnosed with allodynia caused by medication intake for numerous years due to extreme pain. Since the time of the divorce, the Plaintiff's assets and income have increased dramatically. At the time of the divorce, for example the Plaintiff had \$5,505.00 in his IRA as listed on his financial statement. At the present, the Plaintiff has \$471,000.00 in his IRA. Since the time of the divorce, the Plaintiff has purchased and now owns 2 pieces of real property, his home in Pelham, NH and a vacation home. Since the time of the divorce, the

Plaintiff's income has doubled in years, and has increased overall substantially. In 2010, his gross earnings were \$200,000.00; in 2011, \$222,000.00, in 2012 \$100,983.00, and in 2013 his income was \$141,696.00. *See Exhibit D*, (Plaintiff's Financial Statement dated May 8, 2014) Since the time of the divorce, the Defendant's health has significantly declined. The parties clearly contemplated the term of alimony to be in conjunction with the mortgage payoff for the marital home. The Defendant can not afford to pay for the mortgage and the rent. Her only asset is the marital home. Her opportunity for income, employment and her station in life have just worsened from the time of the divorce. The parties clearly contemplated her health condition at the time of the divorce, and clearly contemplated a swap of assets and entangled it into an alimony award. The Defendant's security and division was that she would receive alimony until such time that the mortgage for the home was paid. The parties contemplated this, and that is why they chose the date of July 30, 2026 as the termination of alimony date. The Plaintiff knew his obligations at the time of the divorce, and he entered into a contract with the Defendant knowing her medical condition, and lack of financial opportunity. The Plaintiff now raises his obligations pursuant to the terms of the contract he signed as a burden on his current financial situation and his new family. He knew his obligations at the time that he signed the agreement. he knew, and knows the Defendant has significant medical issues. He knows that she is unable to pay the mortgage. He walked away in 2002 with his business, a home, and since that time his finances have significantly improved. He is now trying to utilize a new law to evade his responsibilities under the contract that he signed in 2002. Clearly, even if the Plaintiff could bring an action pursuant to MGL c. 208 §49, the court would have ample grounds under the circumstances to deviate beyond the durational limits as it is *clearly necessary and in the interests of justice*.

Wherefore, the Defendant, Jacquelyn George respectfully requests that this Honorable Court:

-
1. Dismiss the Plaintiff's Complaint for Modification of Alimony based on the durational limits set forth in MGL c. 208 §49;
 2. Award her attorney's fees and costs in connection with the defense of this action;
 3. Any and all other relief this Honorable Court deems suitable under the circumstances.
-

Respectfully submitted,
Jacquelyn George,
By her Attorney,

Attorney Alessandra E. Petruccelli
Law Office of Alessandra Petruccelli
1216 Bennington Street
East Boston, Massachusetts 02128
BBO# 653963

CERTIFICATE OF SERVICE.

The undersigned hereby certifies that a true copy of the within Defendant's Submission was this day served upon Plaintiff VIA EMAIL and in HAND day of hearing, July 10, 2014

SIGNED under the pains and penalties of perjury.

Dated: July 9, 2014

Alessandra E. Petruccelli, Esq.

EXHIBIT

A

EXHIBIT "A"

ALIMONY

1. Commencing on the first day of the month following the execution of this Agreement and on the first of each month thereafter, the Husband shall pay to the Wife as alimony, for her support and maintenance, the sum of One Thousand Eight Hundred (\$1,800.00) Dollars per month. The payments called for by this paragraph and the Husband's obligation to pay alimony to the Wife shall terminate upon the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026.

2. All alimony payments required by Paragraph 1 above shall be includible in income by the Wife and deductible from income by the Husband on his or her federal and state income tax return.

3. In the event that the Wife receives a gift or inheritance which is in excess of Twenty Five Thousand (\$25,000.00) Dollars, she shall, within 7 days of her receipt thereof, notify the Husband of the amount she has received.

EXHIBIT

B

EXHIBIT "C"
DIVISION OF PROPERTY

REAL PROPERTY:

1. (a) The Husband and Wife own the land and building located at 15 Short Street, Winthrop, Massachusetts (the "Premises"). The parties represent that they have not encumbered the Premises except by a first mortgage of approximately One Hundred Sixteen Thousand (\$116,000.00) Dollars.

(b) Commencing on the first day of the month following the date of the execution, the Wife shall be responsible for and shall pay all of the expenses in connection with the Premises, including but not limited to: principal and interest on the existing first mortgage, home owner's insurance and real estate taxes, utilities and maintenance and repair.

(c) Simultaneously with the execution of this Agreement, the Husband shall execute and deliver a quitclaim deed to the Wife conveying all of his right, title and interest in and to the Premises to her, subject to the mortgage and home equity line;

PERSONAL PROPERTY:

2. The Husband hereby releases to the Wife any right, title or interest he may have in the following property which is to be retained and owned exclusively by the Wife:

- (a) The account standing in her name at Fleet Bank;
- (b) The furniture and furnishings in the Premises;
- (c) The automobile in the Wife's name.

4. The Wife hereby releases to the Husband any right, title or interest she may have in the following property which is to be retained and owned exclusively by the Husband:

- (a) Two timeshares at Disney World owned with his siblings;
- (b) The personal property now in his possession;

- (c) His Individual Retirement Account at Fidelity;
- (d) His interest in the Northeast Electric Retirement Plan;
- (e) His interest in Northeast Electric, Inc.
- (f) His checking and savings accounts at Fleet bank;
- (g) His stock in Fidelity;
- (h) The cash surrender value in three life insurance policies in his name with MFA and MML, subject to the provisions of Exhibit E below;
- (i) The Mako 25 boat.

5. Within six (6) months from the date of execution of this Agreement, the Husband shall pay to the Wife the sum of Three Thousand Five Hundred (\$3,500.00) Dollars to effectuate an equitable division of the assets.

EXHIBIT

C

CONTENTS OF EXHIBIT "C"

Financial Statement of Clifford E. George
(Dated November 20, 2002)

Has been moved to Impounded Record Appendix
IR. 1-9

EXHIBIT

D

CONTENTS OF EXHIBIT "D"

Financial Statement of Clifford E. George
(Dated May 8, 2014)

Has been moved to Impounded Record Appendix
IR. 10-22

Commonwealth of Massachusetts
The Trial Court

Suffolk Division

Probate and Family Court Department

Docket No. 01D 0934

Modification Judgment

Clifford E. George, Plaintiff
v.

Jacquelyn A. George, Defendant

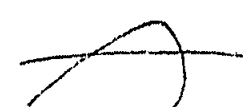
(On a Complaint for Modification filed 8/26/13 as Amended)

After hearing, it is ordered and adjudged that:

1. There has been no change of circumstances to justify a termination of alimony.

Except as modified herein, all outstanding judgments and orders remain in effect.

Date September 16, 2014


JEREMY A. STAHLIN
JUSTICE OF THE PROBATE AND FAMILY COURT

Commonwealth of Massachusetts
The Trial Court

Suffolk Division

Probate and Family Court Department

Docket No. 01D 0934

Memorandum of Decision

Clifford E. George, Plaintiff

v.

Jacquelyn A. George, Defendant

(On a Complaint for Modification filed 8/26/13 as Amended)

The parties were married on June 24, 1989. The husband filed a Complaint for Divorce which was served on June 5, 2001. They were divorced by a Judgment of Divorce Nisi dated November 20, 2002. They had no children together.

The Separation Agreement of the parties, dated November 20, 2002, and incorporated into the Judgment of Divorce Nisi, provided, in part, that:

"6. The provisions of the Agreement may not be changed or modified except by a written instrument signed and acknowledged in duplicate by the Husband and the Wife, or by an order or Judgment of Modification entered by the Suffolk Probate and Family Court.

"7. A copy of this Agreement shall be . . . incorporated in a Judgment of Divorce and shall be merged in the Judgment of Divorce. This Agreement shall retain no independent legal significance, except that the property division provisions referenced in Exhibit C shall survive the Judgment and be thereafter binding upon the parties.

...

"EXHIBIT 'A'

"ALIMONY

"1. Commencing on the first day of the month following the execution of this Agreement and on the first of each month thereafter, the Husband shall pay to the Wife as alimony, for her support and maintenance, the sum of One Thousand Eight Hundred (\$1,800.00) Dollars per month. The payments called for by this paragraph and the Husband's obligation to pay alimony to the Wife shall terminate upon the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026.

"2. All alimony payments required by paragraph 1 above shall be includible in income by the Wife and deductible from income by the Husband on his or her federal and state income tax return.

"3. In the event that the Wife receives a gift or inheritance which is in excess of Twenty Five Thousand (\$25,000.00)

Dollars, she shall within 7 days of her receipt thereof, notify the Husband of the amount she has received."

Exhibit C of the Separation Agreement provided for division of the parties' property including a home in Winthrop, partial interests in two time shares in Florida, furniture and furnishings, an automobile, a 25 foot boat, an IRA, a retirement plan, the husband's business, stock and the cash surrender value of three life insurance policies.

Exhibit B allocated responsibility for the parties' liabilities.

On August 26, 2013, the former husband filed a Complaint for Modification followed by an Amended Complaint for Modification on September 24, 2013. The former wife filed an Answer.

As of the pre-trial conference held on May 8, 2014, the sole remaining issue in the case was whether alimony should terminate. The Court continued the pre-trial conference to July 10, 2014, with an order that:

"On July 10, 2014, the parties shall submit an agreed statement of facts and briefs, and the Court shall decide the remaining alimony issue based upon those submissions."

It is the former husband's position that alimony should terminate based on the durational limits for alimony set forth in G.L. c. 208, § 49.

G.L. c. 208, § 48, provides, in part, that the length of a marriage for alimony purposes is:

"the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the commonwealth.
....."

G.L. c. 208, § 49, provides, in part, that:

"(b) Except upon a written finding by the court that deviation beyond the time limits of this section are required in the interests of justice, if the length of the marriage is 20 years or less, general term alimony shall terminate no later than a date certain under the following durational limits:

"(3) If the length of the marriage is 15 years or less, but more than 10 years, general term alimony shall continue for not longer than 70 per cent of the number of months of the marriage."

- C.S. meyer
- prop div survivors

It is not negotiable
+ cannot be

Sections 4 and 5 of c. 124 of the Acts of 2011 provide, in part, that:

"SECTION 4. (a) Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered before March 1, 2012 shall terminate only under such judgments, under a subsequent modification or as otherwise provided for in this act.

"(b) Sections 48 to 55, inclusive, of said chapter 208 shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments; provided, however, that existing alimony judgments that exceed the durational limits under section 49 of said chapter 208 shall be deemed a material change of circumstance that warrant modification.

"Existing alimony awards shall be deemed general term alimony. Existing alimony awards which exceed the durational limits established in said section 49 of said chapter 208 shall be modified upon a complaint for modification without additional material change of circumstance, unless the court finds that deviation from the durational limits is warranted.

"SECTION 5. Any complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the durational limits of section 49 of chapter 208 of the General Laws, may only be filed under the following time limits:

"(3) Payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015." Emphasis added.

In this case, the parties were married, to the date of service of the divorce papers, for 143.97 months, as follows:

YEAR	MONTHS
1989	5.80
1990	12.00
1991	12.00
1992	12.00
1993	12.00
1994	12.00
1995	12.00
1996	12.00
1997	12.00

Not - Surviving spouse
to flow act.

YEAR	MONTHS
1998	12.00
1999	12.00
2000	12.00
2001	6.17
TOTAL:	143.97

143.97 months is approximately one day less than 12 years. Unless the Court were to find that deviation from the durational limit was warranted, the duration of the alimony would be limited by G.L. c. 208, § 48(b)(3) to:

$$143.97 \times .7 = 100.78 \text{ months}$$

As the first alimony payment was due on December 1, 2002, 100.78 months ends on April 23, 2011, as follows:

PERIOD	MONTHS
12/01/02 to 11/30/03	12.00
12/01/03 to 11/30/04	12.00
12/01/04 to 11/30/05	12.00
12/01/05 to 11/30/06	12.00
12/01/06 to 11/30/07	12.00
12/01/07 to 11/30/08	12.00
12/01/08 to 11/30/09	12.00
12/01/09 to 11/30/10	12.00
12/01/10 to 04/23/11	4.78
TOTAL:	100.78

This determination, however, based upon the durational limits only, would be premature as, under § 5(3) of c. 124 of the Acts of 2011, "[a]ny complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the durational limits of section 49 of chapter 208 of the General Laws, may only be filed . . . on or after March 1, 2015." However, if the alimony payor's Complaint for Modification was not "based solely on the absence of a durational limit in the divorce judgment," and it was not filed "'solely because' the [payor] sought to limit the duration of alimony," the Complaint for Modification is properly before the Court and the Court is:

"obligated under § 4(b) to modify the judgment so that the duration of alimony [does] not exceed the limit established in G.L. c. 208, § 49(b)(4), unless the [Court finds] that deviation from the durational limit [is] warranted." *Holmes v. Holmes*, 467 Mass. 653, 661 (2014) at n.9 (*dictum*).

In the instant case, the divorce judgment, as agreed by the parties, does have a durational limit which is "the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026." That limit was part of a bargained for agreement which included a division of property which survives the judgment and cannot be modified absent countervailing equities. Had the former wife known that, regardless of the language of the Separation Agreement, the alimony would in fact end on a date years earlier than bargained for, she would likely have insisted on different property division terms.

In a case like the present one where the recipient spouse bargained for a durational limit contained in the parties' agreement and agreed to surviving property division terms as part of that bargain, deviation from the new statutory durational limit is warranted, and the bargained for durational limits should stand.

The Joint Uncontested Statement of Facts filed by the parties does not otherwise show any material change of circumstances sufficient to justify a modification. A judgment shall issue accordingly.

Date September 16, 2014


JEREMY A. STAHLIN
JUSTICE OF THE PROBATE AND FAMILY COURT

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

PROBATE & FAMILY COURT
DOCKET NO.: SU-01D-0934

CLIFFORD E. GEORGE,
Plaintiff/Appellant

v.

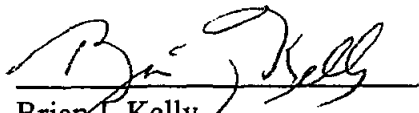
JACQUELYN A. GEORGE,
Defendant/Appellee

NOTICE OF APPEAL

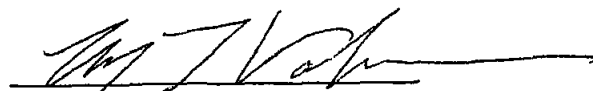
As provided by Rules 3 and 4 of the Massachusetts Rules of Appellate Procedure, the Plaintiff/Appellant, Clifford E. George, in the above-entitled matter hereby appeals this Court's Modification Judgment, which was signed by the Honorable Justice Jeremy A. Stahlin on September 16, 2014.

Respectfully submitted,
Appellate Counsel for Clifford E. George

Date: September 23, 2014


Brian J. Kelly
BBO# 559594
Kelly & Associates, P.C.
21 McGrath Highway, Suite 206
Quincy, MA 02169
(617) 770-0005
bkelly@kellyappellatelaw.com

Date: September 23, 2014


Meghan Tafe Vadakekalam
BBO# 670568
Kelly & Associates, P.C.
21 McGrath Highway, Suite 206
Quincy, MA 02169
(617) 773-0503
mtafe@kellyappellatelaw.com

SEP 23 2014

#32

1

- R.87 -

CERTIFICATE OF SERVICE

I, Brian J. Kelly, Esq., attorney for the Plaintiff/Appellant, Clifford E. George, do hereby certify that I served the within Notice of Appeal on counsel for the Defendant/Appellee, Jacquelyn A. George, by mailing a copy of same, via first class mail, postage prepaid to Alessandra E. Petruccelli, Esq., Law Office of Alessandra Petruccelli, 1216 Bennington Street, East Boston, MA 02128, and on the Plaintiff's trial counsel, Laura J. Cervizzi, Esq. and Laura Messier, Esq., Cervizzi & Associates, P.C., 350 Park Street, Park Place South, Suite 201, North Reading, MA 01864, by first class mail, postage prepaid this 23rd day of September 2014.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 23RD DAY OF SEPTEMBER 2014.


BRIAN J. KELLY, ESQ.

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 01 D 0934 DR

CLIFFORD GEORGE,

PLAINTIFF

v.

JACQUELINE GEORGE,

DEFENDANT

DEFENDANT, JACQUELINE GEORGE'S MOTION FOR ATTORNEY'S FEES AND
COSTS

NOW COMES THE DEFENDANT, Jacqueline George, in the above-captioned matter and respectfully moves this Honorable Court, pursuant to G.L.c. 208, §38, to award \$8,281.25 in attorneys' fees, costs, and expenses in connection with the above-entitled divorce action or any portion thereof as this Court deems just, plus sums and expenses as permitted by this Court.

As grounds therefore, Defendant states as follows:

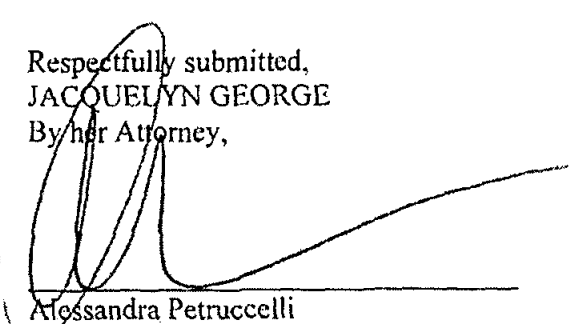
1. The Plaintiff has engaged in an outrageous and costly litigation on his frivolous Complaint for Modification, which has caused Defendant to aggressively defend and incur unnecessary expenses in this action.
2. At the pre-trial this Honorable Court dismissed two of Plaintiff's frivolous claims. The Plaintiff requested that this Court force Defendant to refinance the former marital home, despite no provision for such action in the Separation Agreement. Additionally, Plaintiff requested that this Court allow him to no longer cover Defendant under his health insurance, despite no material change of circumstances and Defendant complying with the Separation Agreement.
3. The Court solely entertained the issue of Alimony and issued an order after a pre-trial conference and briefs submitted by the parties. The Court found no need for trial whereas the Complaint for Modification was on its face both frivolous and not ripe.

4. The Court further found that the alimony award was part of "a bargained for agreement" including a surviving division of property. As such the Plaintiff is required to file a Complaint for Modification under the stringent "countervailing equities" instead of the more lenient "change of circumstances" standard. (See Attached Exhibit 'B'). The sole purpose of Plaintiff's Complaint for Modification was to deprive Defendant of her monetary rights under the Separation Agreement. Whereas Plaintiff requested relief that could not be granted, Plaintiff should bear the costs of this litigation.
5. The Court entered its Judgment on September 16, 2014 and it was received by Counsel on September 18, 2014;
6. The Probate Court has the discretion to award reasonable attorneys' fees and costs. Krock v. Krock, 46 Mass. App. Ct. 528, 533 (1999).
7. There is no requirement of a full evidentiary hearing to establish the amount of counsel fees. Robbins v. Robbins, 16 Mass. App. Ct. 576, 582 (1983).

Wherefore, the Defendant respectfully requests that this Honorable Court order the Plaintiff to pay to the Defendant \$8,281.25 of her attorney's fees or any portion this Court deems just, plus sums and expenses, as permitted by this Court to be submitted subsequent to this Motion, to bring the Defendant's expenditures up to date.

Dated: October 16, 2014

Respectfully submitted,
JACQUELYN GEORGE
By her Attorney,



Alessandra Petruccelli
Attorney for Plaintiff
LAW OFFICE OF ALESSANDRA PETRUCCELLI
1216 Bennington Street
East Boston, MA 02128
BBO #653963
Telephone (617) 567-7750
Telefax (617) 567-4070

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 01 D 0934 DR

CLIFFORD GEORGE,

PLAINTIFF

v.

JACQUELINE GEORGE,

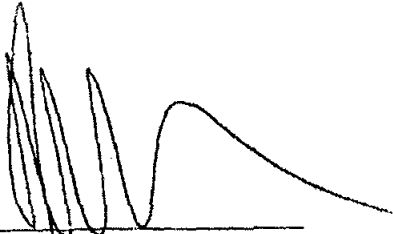
DEFENDANT

ATTORNEY ALESSANDRA PETRUCELLI'S AFFIDAVIT IN SUPPORT OF
FEES

- 1) My name is Attorney Petruccelli, I was admitted to the Massachusetts Bar in December of 2002 and am licensed to practice law in the Commonwealth;
- 2) I represent the Defendant, Jacqueline George, in connection with the above captioned matter. The Defendant filed the Motion for Attorney Fees and Costs pursuant to her defense of Plaintiff's Complaint for Contempt and said Motion is now before this Honorable Court;
- 3) Defendant and I entered into a retainer agreement where I charge the Defendant a reduced hourly fee of \$225.00 for my services;
- 4) The following schedule is submitted in support of Defendant's Motion for Attorney Fees and Costs: See Attached Exhibit 'A'
- 5) Additional costs:
 - a. Drafting and filing Motion for Attorney's Fees: 1.25 hours x 225: \$56.25
 - b. Anticipated Court appearance relative to Motion for Attorney's Fees: 1 hours x 225: \$225.00
- 6) The total costs and fees relative to the defense of this action and the resulting litigation including discovery and hearings is: \$8,281.25

- 7) Defendant has borne all the costs and expenses for the legal fees thus far. Plaintiff has not contributed to attorney fees and costs. The Defendant has currently paid \$6,850.00 in costs.
- 8) I certify that the representation in this affidavit are true and accurate to the best of my knowledge.

Signed this 16th day of October, 2014 under the pains and penalties of perjury.

A handwritten signature in black ink, consisting of several loops and a long trailing stroke, positioned above a horizontal line.

Alessandra Petruccelli, Esq.

EXHIBIT

A

Commonwealth of Massachusetts

The Trial Court

Suffolk Division

Probate and Family Court Department

Docket No. 01D 0934

Modification Judgment

Clifford E. George, Plaintiff

v.

Jacquelyn A. George, Defendant

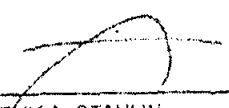
(On a Complaint for Modification filed 8/26/13 as Amended)

After hearing, it is ordered and adjudged that:

1. There has been no change of circumstances to justify a termination of alimony.

Except as modified herein, all outstanding judgments and orders remain in effect.

Date September 16, 2014


JEREMY A. STAHLIN
JUSTICE OF THE PROBATE AND FAMILY COURT

Commonwealth of Massachusetts
The Trial Court

Suffolk Division

Probate and Family Court Department

Docket No. 01D 0934

Memorandum of Decision

Clifford E. George, Plaintiff

v.

Jacquelyn A. George, Defendant

(On a Complaint for Modification filed 8/26/13 as Amended)

The parties were married on June 24, 1989. The husband filed a Complaint for Divorce which was served on June 5, 2001. They were divorced by a Judgment of Divorce Nisi dated November 20, 2002. They had no children together.

The Separation Agreement of the parties, dated November 20, 2002, and incorporated into the Judgment of Divorce Nisi, provided, in part, that:

"6. The provisions of the Agreement may not be changed or modified except by a written instrument signed and acknowledged in duplicate by the Husband and the Wife, or by an order or Judgment of Modification entered by the Suffolk Probate and Family Court.

"7. A copy of this Agreement shall be . . . incorporated in a Judgment of Divorce and shall be merged in the Judgment of Divorce. This Agreement shall retain no independent legal significance, except that the property division provisions referenced in Exhibit C shall survive the Judgment and be thereafter binding upon the parties.

"EXHIBIT 'A' "

"ALIMONY

"1. Commencing on the first day of the month following the execution of this Agreement and on the first of each month thereafter, the Husband shall pay to the Wife as alimony, for her support and maintenance, the sum of One Thousand Eight Hundred (\$1,800.00) Dollars per month. The payments called for by this paragraph and the Husband's obligation to pay alimony to the Wife shall terminate upon the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026.

"2. All alimony payments required by paragraph 1 above shall be includible in income by the Wife and deductible from income by the Husband on his or her federal and state income tax return.

"3. In the event that the Wife receives a gift or inheritance which is in excess of Twenty Five Thousand (\$25,000.00)

Dollars, she shall within 7 days of her receipt thereof certify the Husband of the amount she has received."

Exhibit C of the Separation Agreement provided for division of the parties' property including a home in Winthrop, partial interests in two time shares in Florida, furniture and furnishings, an automobile, a 25 foot boat, an IRA, a retirement plan, the husband's business, stock and the cash surrender value of three life insurance policies.

Exhibit B allocated responsibility for the parties' liabilities.

On August 26, 2013, the former husband filed a Complaint for Modification followed by an Amended Complaint for Modification on September 24, 2013. The former wife filed an Answer.

As of the pre-trial conference held on May 2, 2014, the sole remaining issue in the case was whether alimony should terminate. The Court continued the pre-trial conference to July 10, 2014, with an order that:

"On July 10, 2014, the parties shall submit an agreed statement of facts and briefs, and the Court shall decide the remaining alimony issue based upon those submissions."

It is the former husband's position that alimony should terminate based on the durational limits for alimony set forth in G.L. c. 208, § 49.

G.L. c. 208, § 48, provides, in part, that the length of a marriage for alimony purposes is:

"the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the commonwealth"

G.L. c. 208, § 49, provides, in part, that:

"(b) Except upon a written finding by the court that deviation beyond the time limits of this section are required in the interests of justice, if the length of the marriage is 2. years or less, general term alimony shall terminate no later than a date certain under the following durational limits:

"(3) If the length of the marriage is 15 years or less, and more than 10 years, general term alimony shall continue for not longer than 70 per cent of the number of months of the marriage."

Sections 4 and 5 of c. 124 of the Acts of 2011 provide, in part, that:

"SECTION 4. (a) Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered before March 1, 2012 shall terminate only under such judgments, under a subsequent modification or as otherwise provided for in this act.

"(b) Sections 48 to 55, inclusive, of said chapter 208 shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments; provided, however, that existing alimony judgments that exceed the durational limits under section 49 of said chapter 208 shall be deemed a material change of circumstance that warrant modification.

"Existing alimony awards shall be deemed general term alimony. Existing alimony awards which exceed the durational limits established in said section 49 of said chapter 208 shall be modified upon a complaint for modification without additional material change of circumstance, *unless the court finds that deviation from the durational limits is warranted.*

"SECTION 5. Any complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the durational limits of section 49 of chapter 208 of the General Laws, may only be filed under the following time limits:

"(3) Payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015." *Emphasis added.*

In this case, the parties were married, to the date of service of the divorce papers, for 143.97 months, as follows:

YEAR	MONTHS
1989	5.80
1990	12.00
1991	12.00
1992	12.00
1993	12.00
1994	12.00
1995	12.00
1996	12.00
1997	12.00

YEAR	MONTHS
1989	12.00
1990	12.00
2000	12.00
2001	6.17
TOTAL:	143.97

143.97 months is approximately the day less than 12 years. Unless the Court were to find that deviation from the durational limit was warranted, the duration of the alimony would be limited by G.L. c. 208, § 48(b)(3) to:

$$143.97 \times .7 = 100.78 \text{ months}$$

As the first alimony payment was due on December 1, 2002, 100.78 months ends on April 23, 2011, as follows:

PERIOD	MONTHS
12/01/02 to 11/30/03	12.00
12/01/03 to 11/30/04	12.00
12/01/04 to 11/30/05	12.00
12/01/05 to 11/30/06	12.00
12/01/06 to 11/30/07	12.00
12/01/07 to 11/30/08	12.00
12/01/08 to 11/30/09	12.00
12/01/09 to 11/30/10	12.00
12/01/10 to 04/23/11	4.78
TOTAL	100.78

This determination, however, based upon the durational limits only, would be premature as, under § 48(b)(3) of the Acts of 2011, "[a]ny complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the durational limits of section 42 of chapter 208 of the General Laws, may only be filed . . . on or after March 1, 2015." However, if the alimony payer's Complaint for Modification was not "based solely on the absence of a durational limit in the divorce judgment," and it was not filed "solely because the [payor] sought to limit the duration of alimony," the Complaint for Modification is properly before the Court and the Court is:

"obligated under § 4(b) to modify the judgment so that the duration of alimony [does] not exceed the limit established in G.L. c. 208, § 48(b)(4), unless the [court finds] that deviation from the durational limit [is] warranted." *Walter v. Holmes*, 467 Mass. 652, 8-1-2014 at 113-114.

In the instant case, the divorce judgment, as agreed by the parties, does have a durational limit which is "the earliest to occur of the Husband's death, the Wife's death, the Wife's remarriage or July 30, 2026." That limit was part of a bargained for agreement which included a division of property which survives the judgment and cannot be modified absent countervailing equities. Had the former wife known that, regardless of the language of the Separation Agreement, the alimony would in fact end on a date years earlier than bargained for, she would likely have insisted on different property division terms.

In a case like the present one where the recipient spouse bargained for a durational limit contained in the parties' agreement and agreed to surviving property division terms as part of that bargain, deviation from the new statutory durational limit is warranted, and the bargained for durational limits should stand.

The Joint Uncontested Statement of Facts filed by the parties does not otherwise show any material change of circumstances sufficient to justify a modification. A judgment shall issue accordingly.

Date September 16, 2014


JEREMY A. STAHLIN
JUDGE OF THE PROBATE AND FAMILY COURT

EXHIBIT

B

Client: Jacqueline George

Retainer: \$3,500.00

Rate: \$225.00 Reduced Rate

DATE	DESCRIPTION	HOURS	FEE
	Initial meeting No charge.	0	0
11/5/13	Draft answer to complaint for modification, review documentation. Letter to counsel, meeting with client.	1.6	360
11/6/13	Draft further documentaiton. Emails with client.	0.9	202.5
11/7/13	Email with client.	0.3	67.5
12/5/13	Review discovery meeting with client.	2.1	472.5
12/9/13	Preparation of discovery for Mr. Clifford, review file.	0.9	202.5
12/10/13	prepare financial statement and responsive documentation.	1.1	192.5
3/5/14	Email with counsel and client.	0.4	90
3/6/14	Emails with client/counsel.	0.6	135
3/13/14	Receive discovery from opposing party review same.	0.7	157.5
4/1/14	Meeting with client, review.	1.1	247.5
	INVOICE TOTAL:		2127.5
	Balance Retainer:		1372.5
4/2/14	Multiple emails on case with counsel.	0.4	90
4/10/14	Email with client and with counsel, review same.	0.7	157.5
4/14/14	Meeting with client on case, review documentation, review case issues. Preparation for four way meeting.	1.8	405
4/23/14	4 way meeting with counsel, client and opposing party. Preparation for meeting, meeting with client, review documentation.	2.2	495
4/24/14	email with client and counsel.	0.3	67.5
4/25/14	Receive and review email from counsel, offer from counsel, email to client.	0.7	157.5
5/4/14	Preparation of pretrial memo, begin draft.	0.9	202.5

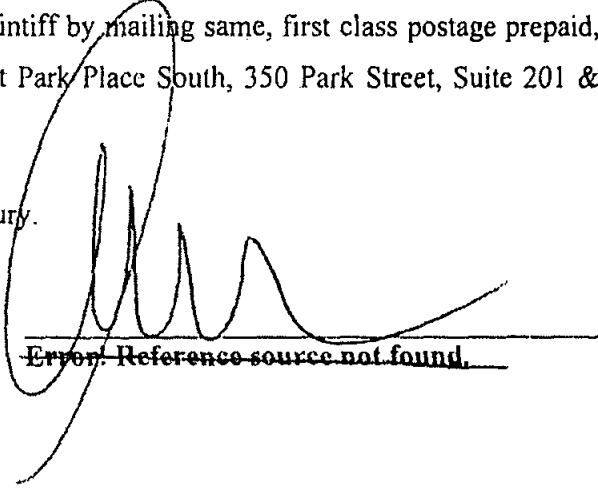
5/6/14	Finish pretrial memo draft, email with client and with counsel, preparation for pretrial hearing prepare updated financial statement, memo exchange, review memo of the Plaintiff, email with client.	2.8	630
5/7/14	Pretrial hearing at court. Meeting with client counsel and opposing party.	2.3	517.5
		0	0
			0
			0
			0
			2722.5
	RETAINER BALANCE:		-1372.5
	BALANCE DUE FROM CLIENT:		\$1,350.00
	PAID		\$1,350.00
	RETAINER REPLENISH		2000
5/8/14	Receive/review order from court. Review file	1.1	247.5
6/2/14	Preparation of notes on alimony statute, review documentation for new draft	1.3	292.5
7/7/14	Draft submission pursuant to court order, emails with client/counsel on case.	2.1	472.5
7/8/14	Draft updates on joint facts, draft continued on submission to exchange, emails on case and with clients.	3.1	697.5
7/9/14	Multiple emails with uncontested facts, updates to our submission receive/review their submission, emails with counsel on case.	3.4	765
7/10/14	Attendance at court hearing, submission of memos to Judge Stahlin.	1.3	292.5
9/18/14	Receive/review judgment, email to client. Email to counsel with respect to attorney's fees motions.	0.7	157.5
			0
			0
			0
			2925
	BALANCE OF RETAINER:		-2000
	BALANCE DUE FROM CLIENT:		\$925.00
	TOTAL FEES TO DATE:		\$7,775.00

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Defendant's Motion for Attorney's Fees was this day served upon Plaintiff by mailing same, first class postage prepaid, to Laura J. Cervizzi, Attorney for Plaintiff, at Park Place South, 350 Park Street, Suite 201 & 203, North Reading, MA 01864.

SIGNED under the pains and penalties of perjury.

Dated: October 20, 2014



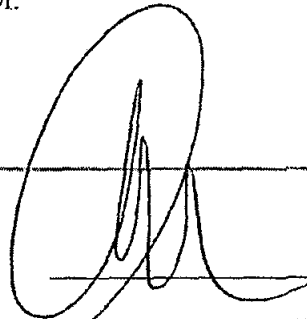
~~Error. Reference source not found.~~

NOTICE OF HEARING ON MOTION

To: Laura J. Cervizzi, Esquire

Please take notice that the undersigned will present for hearing the within Defendant's Motion for Attorney's Fees before Suffolk Division of the Probate and Family Court, Justice Stahlin on December 3, 2014 at 9 AM.

Dated: October 20, 2014

A handwritten signature in black ink, consisting of a large, stylized capital 'A' followed by a series of loops and a long horizontal stroke extending to the right.

Alessandra Petruccelli

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #01D0934

Clifford E. George

PLAINTIFF

v.

Jacquelyn A. George,

DEFENDANT

Filed 12/9/14
JB

PLAINTIFF'S OPPOSITION TO DEFENDANT'S
REQUEST FOR ATTORNEY'S FEES

NOW COMES the Plaintiff, Clifford E. George (hereinafter "Former Husband") and hereby opposes the request by the Defendant, Jacquelyn A. George (hereinafter "Former Wife") for attorney's fees, dated October 16, 2014.

The Former Wife is asking the Court to order the Former Husband to pay her attorney's fees for opposing the Former Husband's Complaint for Modification dated August 19, 2013, based solely on the Former Wife's assessment that the Former Husband's Complaint for Modification was a frivolous action and that the Former Husband was not successful in obtaining the relief he requested. Taking into consideration the fact that the Former Husband has filed an appeal of the Judgment dated September 16, 2014 in this matter, there are multiple issues that must be addressed, as follows: (1) Whether the Former Wife's Motion for Fees is timely and proper; (2) Whether the Former Husband's Complaint for Modification was frivolous litigation; and (3) Whether the Suffolk Probate & Family Court has jurisdiction to hear the Former Wife's Complaint for Modification. An examination of the facts will reveal that the Former Wife's motion should be denied.

Additionally, the Former Husband is seeking attorney's fees and costs in connection with the Former Wife's motion for fees dated October 16, 2014, as the Former Husband has incurred



12/16/14 44

unnecessary fees and costs to respond to the Former Wife's baseless motion and appear for the hearing marked for December 9, 2014.

I. ISSUES

A. **Whether the Former Wife's Motion for Fees is timely and proper.**

The Former Wife's motion for fees was filed untimely and was improper, as the matter went to judgment on September 16, 2014, thus concluding the case. The Former Wife's request for fees was included in her Answer to Plaintiff's Complaint for Modification, dated November 5, 2013, and at that time became an issue to be determined in the pending matter before the Court. Further, the Former Wife requested attorney's fees in her pre-trial memorandum filed on May 8, 2014. The Court in its judgment dated September 16, 2014 chose not to provide the Former Wife with attorney's fees despite the Court's decision not to modify the terms of alimony. The Court was well aware that the Former Wife filed an answer, as it is specifically addressed in the Court's Memorandum of Decision, also dated September 16, 2014. The Court also noted in its Memorandum that "[a]s of the pre-trial conference held on May 8, 2014, the sole remaining issue in the case was whether alimony should terminate," thereby disposing of the Former Wife's request for fees.

Further, the fact that the Court denied the Former Husband's ultimate relief does not automatically create a presumption of attorney's fees. The Former Husband continued to prosecute his Complaint for Modification based on the fact that his right to do so was firmly grounded in The Act.

Thus, the Court had every opportunity to make findings as to the Former Wife's entitlement to attorney's fees and fashion an order to that effect, once the Former Wife brought a claim for fees in her answer to the Former Husband's Complaint for Modification. However, the Court chose not to do so. It has long been established that a probate court judge has discretion in awarding attorney's fees in appropriate circumstances. Cooper v. Cooper, 62 Mass.App.Ct. 130, 141 (2004). An award of counsel fees is presumed to be right and ordinarily ought not be disturbed. Ross v. Ross, 385 Mass. 30, 39 (1982), quoting from Smith v. Smith, 361 Mass. 733, 738 (1972). The fact that the probate court did not award the Former Wife counsel fees in the judgment dated September 16, 2014 was solely in the discretion of the probate court judge and such an order should not be disturbed.

Finally, the Former Wife's Motion for Attorneys' fees is improperly grounded on M.G.L. c. 208, §38, which does not deal directly with post-judgment motions..

The matter of attorney's fees has been judged on the merits, cannot be relitigated, and the Former Wife's claims for fees should be dismissed.

B. Whether the Former Husband's Complaint for Modification was frivolous litigation.

After analysis of the laws of Massachusetts, as well as binding caselaw, it is clear that the Former Husband's Complaint for Modification was not frivolous and was properly addressed. By way of summary, the parties were divorced on November 20, 2002 following a thirteen year marriage. Per the parties' Separation Agreement, the Former Husband is required to pay alimony to the Defendant, Jacquelyn A. George (hereinafter "Former Wife") in the amount of \$1,800.00 per month until death of either party, the remarriage of the Wife, or July 30, 2026, whichever occurs earliest. This provision merged in the Judgment of Divorce entered on November 20, 2002.

Since the parties' divorce, the Alimony Reform Act (hereinafter "The Act") has been implemented, which places term limits on alimony based on the length of marriage of the parties. The Act, along with other material changes in circumstances regarding a refinance of the loan on the former marital home and issues regarding health insurance, warranted the Former Husband's filing of Complaint for Modification on August 19, 2013.

The Alimony Reform Act specifically references the requisite standard for the filing of a complaint for modification under the Act. Specifically, Section 4(b) states that "[s]ections 48 to 55, inclusive, of said chapter 208 shall not be deemed a material change of circumstances that warrants modification of the amount of existing alimony judgments; provided, however that existing alimony judgments that exceed the durational limits under section 49 of said chapter 208 shall be deemed a material change in circumstances that warrants modification." By virtue of the plain language of the statute, it is clear that the Plaintiff's prayer to terminate alimony is not frivolous, but specifically allowed by the statute.

Section 5 of The Act provides a timeline for the filing of "any complaint for modification filed by a payor under section 4 of this act *solely* because of the existing

alimony judgment exceeds the durational limits of section 49.” *Emphasis added.* This Section states that “payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015.”

The application of the Section 5 timelines is addressed in Holmes v. Holmes, 467 Mass. 653, 661 (2014). The Holmes case involved a complaint for modification filed by the payee spouse as to the amount of alimony and a counterclaim filed by the payor spouse in regards to the duration of alimony ordered by the trial court judge. The Court considered the timelines in a footnote, writing that “the complaint for modification in this case was filed by the recipient spouse (wife) not the payor spouse (husband) and the husband’s counterclaim was not based solely on the absence of a durational limit in the divorce judgment” finding that, as such, the trial court judge “was obligated under §4(b) to modify the divorce judgment so that the duration of alimony did not exceed the limit established in G.L. c. 208, §49(b)(4), unless the judge found that deviation from the durational limit was warranted” *Id. at FN 9*.

In the instant case, the Former Husband raised multiple claims in his complaint in regards to continued health insurance coverage and his obligations under the mortgage. Despite the fact that the Court did not entertain two of the three forms of relief sought in the Former Husband’s Complaint for Modification, the Court did find merit regarding the Former Husband’s requested relief of termination of alimony, a clear indication that the claim relating to alimony especially was not frivolous. This resulted in the scheduling of a further pre-trial conference, at which times the parties were ordered to submit briefs upon which the Court shall decide the remaining alimony issue, rather than proceeding with a trial. As the Former Wife has grossly misrepresented in her request for fees, the Court did not, in fact, note in any pleadings that it found no need for trial due to the Former Husband’s Complaint for Modification being “frivolous and not ripe.”

It is also important to note that at no time during the pendency of the Former Husband’s Complaint for Modification did the Former Wife bring a motion to dismiss or a motion for summary judgment to dispose of the Former Husband’s “frivolous” complaint. Instead, the Court determined that it was proper for the Former Husband to proceed on his alimony claim by way of ordering the parties to submit pleadings to be considered, as opposed to a trial. The Former Wife’s claims that the Former Husband’s Complaint for Modification is “frivolous” and “not ripe,” amount to nothing more than

her own opinion, as this claim is not supported in any way by the Court. This is insufficient to support a request for fees. *See, American Employers' Insurance Co. v. Horton*, 35 Mass.App.Ct. 921, 924 (1993) (Appeals Court discounted affidavits of both the party and party's counsel, requesting attorney's fees, where said affidavits stated their opinions and beliefs as to the opposing parties actions in the case.)¹ The mere fact that the Former Wife makes a statement regarding frivolity or merit does not somehow give it legal authority.

Thus, the Former Husband's motivation for bringing the Complaint for Modification dated August 19, 2013 should not be considered meritless or frivolous in any way.

C. Whether the Suffolk Probate & Family Court has jurisdiction to hear the Former Wife's Motion for Fees.

The Suffolk Probate & Family Court does not have jurisdiction to hear the Former Wife's Motion for Fees. On September 23, 2014, seven (7) days after the Judgment on the Former Husband's Complaint for Modification entered, the Former Husband filed for an appeal. As the appeal was filed only a week after the judgment, the Former Husband's appeal is timely. After an appeal has been claimed and filed in the registry of probate, all proceedings in pursuance of the act appealed from shall, except as otherwise expressly provided, be stayed until the determination thereof by the supreme judicial court or appeals court. M.G.L. Chapter 215, Section 22. The issue on appeal is completely interwoven with the issues raised in the Defendant's Motion for fees. The filing of the appeal has shifted jurisdiction to the appeals court for further determination.

Thus, jurisdiction no longer lies in the probate and family court.

II. CONCLUSION

The Former Wife's request for fees is untimely and improper; the Former Husband's Complaint for Modification is not frivolous litigation; and the Suffolk Probate and Family Court lacks jurisdiction to hear and determine the merits of the Former Wife's motion for

¹ It should be noted further that the only Affidavit set forth in support of said request for fees is that of the Former Wife's counsel outlining fees dispensed, after the matter went to judgment. The Former Wife submitted no motion to dismiss or motion for summary judgment which included allegations of lack of merit as to the Former Husband's Complaint for Modification, nor case law or legal theory to substantiate that claim.

fees. Thus, the Former Wife's motion for fees shall be denied, with prejudice, and the Former Husband shall be awarded fees and costs due to the unnecessary fees and costs incurred to respond to the Former Wife's baseless motion and appear for the hearing marked for December 9, 2014.

Dated: December 8, 2014

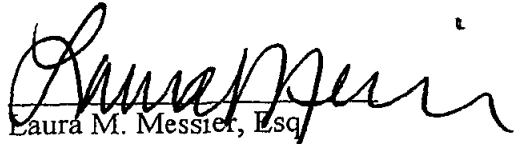
Respectfully submitted.
Clifford E. George,
By His Attorney,



Laura Messier, Esq. BBO#666980
Cervizzi & Associates
Attorney for Plaintiff
350 Park Street
Park Place South, Suite 201
North Reading, MA 01864
Phone: (978) 276-0777/ Fax: (978) 276-0778

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the within Plaintiff's Opposition to Defendant's Request for Attorney's Fees was hereby served on this day upon Defendant by in-hand service to the office of Defendant's attorney, Alessandra Petruccelli, Law Office of Alessandra Petruccelli, 1216 Bennington Street, East Boston, MA 02128.


Laura M. Messier, Esq.

Dated: December 8, 2014

Commonwealth of Massachusetts
The Trial Court

Suffolk Division

Probate and Family Court Department
Supplemental
Modification Judgment

Docket No. 01D 0934

Clifford E. George, Plaintiff

v.

Jacquelyn A. George, Defendant

(On a Complaint for Modification filed 8/26/13, as Amended)

After hearing, it is ordered and adjudged that:

1. The plaintiff shall pay to counsel for the defendant the sum of \$3,270.00, on or before January 16, 2015, on account of defendant's legal fees reasonably incurred on the issues of mortgage refinance and health insurance.
2. The plaintiff shall pay to counsel for the defendant the sum of \$3,792.00 on account of defendant's legal fees reasonably incurred on the issue of alimony termination, payment to be made no later than thirty days after decision on, or dismissal of, the appeal claimed on September 23, 2014, with interest at the legal rate from today.

Except as modified herein, all outstanding judgments and orders remain in effect.

Date December 9, 2014


JEREMY A. STAHLIN
JUSTICE OF THE PROBATE AND FAMILY COURT

- R. 111 -

Commonwealth of Massachusetts
The Trial Court

Suffolk Division

Probate and Family Court Department

Docket No. 01D 0934

Memorandum of Decision

Clifford E. George, Plaintiff

v.

Jacquelyn A. George, Defendant

(On a Motion for Attorney Fees and Costs under a
Complaint for Modification filed 8/26/13 as Amended)

The parties were married on June 24, 1989, and divorced by a Judgment of Divorce Nisi dated November 20, 2002. The Separation Agreement incorporated into the judgment included a provision for alimony.

On August 26, 2013, the former husband filed a Complaint for Modification followed by an Amended Complaint for Modification on September 24, 2013. The former wife filed an Answer which included a request that the court "[o]rder that the [former husband] pay all of [the former wife]'s attorney's fees and costs relative to the defense of this action."

The Court decided the case on an agreed statement of facts and issued a Modification Judgment on September 16, 2014, without ruling on the request for fees.

The former husband filed a notice of appeal on September 23, 2014,¹ and the former wife filed a motion for attorney fees and costs on October 20, 2014.

On November 13, 2014, the Court issued a Temporary Order which provided that:

"The defendant's motion for attorney's fees and costs is scheduled to be heard on December 5, 2014, at 9:00 a.m., provided the defendant has served, on or before November 26, 2014, an itemized chronological affidavit of time spent."

At the hearing today, the former husband argued, among other things, that proceedings on the motion for fees and costs were stayed by the provisions of G.L. c. 215, § 22.² That statute provides that:

"After an appeal has been claimed and filed in the registry of probate, all proceedings in pursuance of the act appealed from shall, except as otherwise expressly provided, be stayed until the determination thereof by the supreme judicial court or

¹ It does not appear that the appeal has been docketed in the Appeals Court.

² The operation of the Modification Judgment is not stayed.

appeals court; but if, upon such appeal, such act is affirmed, it shall thereafter be of full force and validity. . . ."

As the issue appealed from is whether or not alimony will continue, a request for legal fees is not a proceeding "in pursuance of the act appealed from."

The Complaint for Modification, as amended, requested three things:

1. That the Court allow the former husband to terminate coverage of health insurance on behalf of the former wife,
2. That the Court order the former wife to refinance and remove the former husband's name from the mortgage for the former marital home, and
3. That the Court order a termination of alimony.

Since the former husband's income had significantly increased since the time of the divorce, and the former wife was receiving, besides alimony, only modest disability income, that issue was eliminated at the pre-trial conference.

Since the former wife's obligation to continue to pay the mortgage was part of the "EXHIBIT 'C' DIVISION OF PROPERTY" provisions of the Separation Agreement, and those provisions, under the terms of the Separation Agreement "shall survive the Judgment and be thereafter binding upon the parties," that issue was also eliminated at the pre-trial conference.

The pre-trial conference was held on May 8, 2014. The legal fees reasonably incurred by the former wife's counsel through the pre-trial conference are as follows:³

DATE	HOURS	FEE
11/05/13	1.6	360.00
11/06/13	0.9	202.50
11/07/13	0.3	67.50
12/05/13	2.1	472.50
12/09/13	0.9	202.50
12/10/13	1.1	247.50
03/05/14	0.4	90.00
03/06/14	0.6	135.00
03/13/14	0.7	157.50
04/01/14	1.1	247.50

³ The date of the pre-trial conference is mistakenly listed as "5/7/14" in the affidavit of former wife's counsel. - R.113-

DATE	HOURS	FEE
04/02/14	0.4	90.00
04/10/14	0.7	157.50
04/14/14	1.8	405.00
04/23/14	2.2	495.00
04/24/14	0.3	67.50
04/25/14	0.7	157.50
05/04/14	0.9	202.50
05/06/14	2.8	630.00
05/07/14	2.3	517.50
TOTALS:	21.8	\$4,905.00

As the request to modify the surviving property division provision was "wholly insubstantial, frivolous and not advanced in good faith" within the meaning of G.L. c. 231, § 6F, fees for defending against that request will be awarded.

The husband's income at the time of the divorce was \$1,650.00 per week according to his Financial Statement dated November 20, 2002, and it was \$2,884.00 per week as of the pre-trial conference in this case.

The wife's income was \$312.00 per week from disability, before alimony payments, as of the pre-trial conference in this case.

The cost to the husband of health insurance at the time of the divorce was \$150.00 per week. The cost as of the pre-trial conference in this case was \$111.92 per week, including coverage for the former wife, according to footnote 4 to his Financial Statement.⁴

Under those circumstances, the former husband's request to terminate coverage of health insurance on behalf of the former wife was also "wholly insubstantial, frivolous and not advanced in good faith" within the meaning of G.L. c. 231, § 6F, and fees for defending against that request will also be awarded.

Assuming that the fees for those two issues were two thirds of the total fees incurred as of the pre-trial conference, the fees for those two issues awarded will be $4,905 \div 3 \times 2 = \$3,270.00$.

The legal fees reasonably incurred by the former wife's counsel following the pre-trial conference are as follows:⁵

⁴ Medical insurance cost is listed as \$291.92 per week elsewhere in the former husband's Financial Statement as of the pre-trial conference in this case.

⁵ The Court has not included time for drafting the fee motion and supporting affidavits.

DATE	HOURS	FEE
05/08/14	1.1	247.50
06/02/14	1.3	292.50
07/07/14	2.1	472.50
07/08/14	3.1	697.50
07/09/14	3.4	765.00
07/10/14	1.3	292.50
09/18/14	0.5	112.50
12/09/14	1.0	225.00
TOTALS:	12.8	\$3,105.00

The total fees reasonably incurred by the former wife's counsel for the alimony issue are $4,905 - 3,270 + 3,105 = \$4,740.00$.

Given the amendment to the alimony statute, it was not frivolous of the former husband to want to test whether his alimony could be terminated. However, since the modification request is based solely on the change in the statute, and no relevant facts were or are in dispute, given the parties' bargained for agreement including surviving property division provisions, and the disparity in the parties's incomes,⁶ the cost to the former wife should have been smaller, and the former husband should be responsible for some of the cost she incurred. Of the fees incurred by the former wife on the alimony issue, the Court will order the husband to pay 80%, or \$3,792.00.

Date December 9, 2014


JEREMY A. STAHLIN
JUSTICE OF THE PROBATE AND FAMILY COURT

⁶ After alimony, the former husband's weekly income is \$2,468.62 per week, and the former wife's income is \$727.38 per week.

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 01 D 0934 DR

CLIFFORD GEORGE,

PLAINTIFF

v.

JACQUELINE GEORGE,

DEFENDANT

Filed 10/20/14
Suffolk Div. Probate and Family Court

12/10 2014
The within motion is hereby allowed / denied. *in part. See Memorandum of Decision and Supplemental Judgment.*
Jeremy A. Stahl
Judge of Probate and Family Court

DEFENDANT, JACQUELINE GEORGE'S MOTION FOR ATTORNEY'S FEES AND COSTS

NOW COMES THE DEFENDANT, Jacqueline George, in the above-captioned matter and respectfully moves this Honorable Court, pursuant to G.L.c. 208, §38, to award \$8,281.25 in attorneys' fees, costs, and expenses in connection with the above-entitled divorce action or any portion thereof as this Court deems just, plus sums and expenses as permitted by this Court.

As grounds therefore, Defendant states as follows:

1. The Plaintiff has engaged in an outrageous and costly litigation on his frivolous Complaint for Modification, which has caused Defendant to aggressively defend and incur unnecessary expenses in this action.
2. At the pre-trial this Honorable Court dismissed two of Plaintiff's frivolous claims. The Plaintiff requested that this Court force Defendant to refinance the former marital home, despite no provision for such action in the Separation Agreement. Additionally, Plaintiff requested that this Court allow him to no longer cover Defendant under his health insurance, despite no material change of circumstances and Defendant complying with the Separation Agreement.
3. The Court solely entertained the issue of Alimony and issued an order after a pre-trial conference and briefs submitted by the parties. The Court found no need for trial whereas the Complaint for Modification was on its face both frivolous and not ripe.

[Signature] OCT 20 2014 *35*



-R.116-

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

PROBATE & FAMILY COURT
DOCKET NO.: SU-01D-0934

CLIFFORD E. GEORGE,)
Plaintiff/Appellant)
v.)
JACQUELYN A. GEORGE,)
Defendant/Appellee)

NOTICE OF APPEAL (SECOND)

As provided by Rules 3 and 4 of the Massachusetts Rules of Appellate Procedure, the Plaintiff/Appellant, Clifford E. George, in the above-entitled matter hereby appeals this court's "Supplemental Modification Judgment on Complaint for Modification filed August 26, 2103 as Amended" signed by the Honorable Justice Jeremy A. Stahlin on December 9, 2014, specifically as to Paragraph 2 of said Judgment, which ordered Mr. George to pay counsel fees regarding the issue of alimony termination.

It should be noted that this appeal is in addition to the previously filed Notice of Appeal (filed on September 23, 2014) as to this court's Modification Judgment, signed September 16, 2014 by the Honorable Justice Jeremy A. Stahlin.

Therefore, the Plaintiff/Appellant, Mr. George is appealing **BOTH** judgments.

Respectfully submitted,
Appellate Counsel for Clifford E. George

Date: December 16, 2014


Brian J. Kelly

BBO# 559594

Kelly & Associates, P.C.

21 McGrath Highway, Suite 206

Quincy, MA 02169

(617) 770-0005

bkelly@kellyappellatelaw.com

DEC 17 2014

DEC 18 2014 # 46

CERTIFICATE OF SERVICE

I, Brian J. Kelly, Esq., attorney for the Plaintiff/Appellant, Clifford E. George, do hereby certify that I served the within Notice of Appeal (Second) on counsel for the Defendant/Appellee, Jacquelyn A. George, by mailing a copy of same, via first class mail, postage prepaid to Alessandra E. Petruccelli, Esq., Law Office of Alessandra Petruccelli, 1216 Bennington Street, East Boston, MA 02128, and on the Plaintiff's trial counsel, Laura J. Cervizzi, Esq. and Laura Messier, Esq., Cervizzi & Associates, P.C., 350 Park Street, Park Place South, Suite 201, North Reading, MA 01864, by first class mail, postage prepaid this 16th day of December 2014.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 16TH DAY OF DECEMBER 2014.


BRIAN J. KELLY, ESQ.

Volume: I
Pages: 12
Exhibits: 0

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS PROBATE & FAMILY COURT

* * * * *
JACQUELYN GEORGE
v
CLIFFORD GEORGE
* * * * *

Docket No. SU-01D-0934

BEFORE THE HONORABLE JUDGE STAHLIN

APPEARANCES:

Laura Messier, Esquire
For Clifford George

Alessandra E. Petruccelli, Esquire
For Jacquelyn George

MOTIONS HEARING

Boston, Massachusetts
December 9, 2014

Linda Lee, CVR~M
Transcribed from CD

1 (Recording begins at 9:24 a.m.)

2 THE COURT: The George matter.

3 THE CLERK: Approaching, Your Honor. Please step
4 forward.

5 THE COURT: Would you tell me your names for the
6 record, please?

7 MR. GEORGE: Clifford George.

8 MS. MESSIER: Good morning, Your Honor. Laura Messier
9 on behalf of Clifford George.

10 MS. PETRUCCELLI: Good morning, Your Honor. Alessandra
11 Petruccelli on behalf of Jacquelyn George. Your Honor, my
12 client was trying to get here this morning. She's severely
13 handicapped, so she wasn't able to, because she had to take
14 The Ride, she wasn't able to get here due to the weather.

15 THE COURT: Okay. I have read the motion for fees,
16 the affidavit in support, although I haven't looked at all
17 the detail on the affidavit, and the opposition and I have
18 attorney -- and affidavit in support of fees for opposing
19 the motion, which I have not yet looked at in detail. So,
20 I'll hear you on the --

21 MS. PETRUCCELLI: Judge, I just want to make sure.
22 You had ordered -- when you scheduled this motion date, you
23 had also ordered that I provide a more detailed time bill,
24 so I want to make sure that you received that as well.

1 THE COURT: That's the affidavit I'm talking about.

2 MS. PETRUCCELLI: Okay. Judge, I am bringing -- I
3 brought this motion for fees. When we were here, we had a
4 sort of trial hearing scheduled; however, we've submitted
5 memorandums on the one issue of alimony. There were three
6 prongs to my sister's complaint for modification. One was
7 health insurance. The other was a refinancing of the
8 marital home under the property division section of the
9 parties' separation agreement which survived and was found
10 to be not fruitful claims at the pretrial hearing. At the
11 pretrial, Your Honor indicated that Mr. George was making
12 significantly more money than he was at the time of the
13 divorce and so the health insurance there was no
14 modification warranted at that time.

15 On the one remaining issue of alimony, which my sister
16 raised as a duration limits argument, you asked us to
17 submit memorandums of law in support of our relative
18 positions. When we came here that morning, I specifically
19 requested to submit a motion for attorney's fees and --
20 which you had indicated that I would be able to file, which
21 is why I filed it, obviously, post-judgment. We received
22 the judgment on September 18th. I sent an email on that
23 day, the minute I received the judgment, to counsel saying
24 as -- you know, as was indicated by the Court, I wanted to

1 give you an opportunity to discuss the issues of fees. I
2 think in light of the decision that fees are warranted;
3 would you like to work something out. Counsel had not
4 received the judgment. I scanned it. I sent it to her
5 secretary. I have the emails showing that, and I never
6 received a response.

7 The only thing I did receive was an appeal, which now
8 my client is in the position of having to hire counsel to
9 now fight this appeal. That isn't one of the bases of the
10 motion for the fees, Your Honor; however, I will point out
11 that in their complaint for modification, with respect to
12 the durational limits, their complaint was brought
13 prematurely. Counsel rests her argument on the fact that
14 she had other things in her complaint for modification,
15 other issues, the refinance of the home and health
16 insurance. My understanding of the law is if you bring a
17 complaint for modification on alimony and you put another
18 argument in there relative to alimony, for example,
19 cohabitation or something else under the statute, then you
20 are okay to bring that modification. Her complaint for
21 modification is solely on the durational limits, which
22 under the law under Section 5 specifically says that no
23 complaints for modification should be filed under March 1,
24 2015.

1 In addition to this, Your Honor, if you -- I'm sure
2 you've re-read your decision, but you did do a deviation
3 even beyond the durational limits based on the negotiated
4 property division and the underlying separation agreement.
5 Where my client walked away from Mr. George's property that
6 he owned at the time, his businesses, with the intention of
7 having her mortgage paid until 2026, which is the date that
8 the mortgage is set to be paid off according to the terms
9 of the loan note, and that was the bargain for agreement at
10 that particular time. At that time, my client was
11 handicapped. She had had back surgeries and now her health
12 is even worse off at this particular time. And doing that
13 is the reason that she made that bargain for agreement at
14 that time, and those were our arguments and the Court did
15 find in our favor.

16 I think my fees are reasonable under the
17 circumstances. My client is disabled. She had to borrow
18 money from her father to support this litigation and go
19 through discovery. And despite having tried to negotiate
20 and settle this case prior to trial or even prior to the
21 pretrial, we were unable to do so. One of the prongs of
22 counsel's complaint for modification is failing to
23 refinance the marital home. Property division, again, was
24 a surviving provision. Counsel's office did the separation

1 agreement. Had they wanted to have a date certain of which
2 Ms. George would be responsible for refinancing the home or
3 taking the -- on encumbering the credit, they certainly
4 could have or should have written it into the actual
5 underlying separation agreement. They didn't, and then
6 they brought a complaint for modification in which we had
7 to provide a defense to.

8 In my original answer and counterclaim, I did ask for
9 attorney fees and costs and asked for the matter to be
10 dismissed. We went through discovery, Your Honor, and
11 meetings and were unable to rectify the situation until we
12 got to the pretrial and Your Honor did point out that the
13 health insurance issue was pretty much moot due to the fact
14 that Mr. George's income had increased so dramatically over
15 the course of the years and also the fact that the
16 surviving provision of the property division was surviving
17 and there was no -- there was no requirement that Ms.
18 George be required to refinance at a particular time. So,
19 those aspects of the complaint were moot.

20 And then, again, you had us submit the memorandums
21 relative to their one alimony issue, which counsel brought
22 on the durational limits. I would have certainly filed my
23 motion for attorney's fees that day; however, I did get the
24 indication from the Court that that would be something we

1 could submit after the fact. Certainly the other -- the
2 other point to that is, Your Honor, until we got the
3 judgment I wasn't quite sure exactly what fees, if any, I
4 was going to be seeking back. For example, if the alimony
5 had it necessarily gone our way, I would have maybe re-
6 thought some of those positions. I think my fees are
7 reasonable. Counsel, in her opposition, doesn't make any
8 argument as to the reasonableness of my fees, more so that
9 this is more better suited for the Appellate Court.
10 However, as I said, I believe Your Honor did indicate that
11 we could file that motion. I was under that belief when I
12 sent an email to counsel and sent her a copy of the
13 judgment and never got a response, only got an appeal.

14 So, I'd ask that you award fees to my client for
15 having to defend this action. Certainly she's not facing
16 more litigation as a result of Mr. George's desire to keep
17 this litigation going. Thank you.

18 THE COURT: Okay.

19 MS. MESSIER: Good morning, Your Honor. This is a
20 preliminary issue. I'm certainly not going to re-litigate
21 the entire action. That's not what we're here for today.
22 We're only here on the singular issue of fees. It is not
23 my recollection that at that hearing, which I believe was
24 in July, forgive me I don't remember the exact date.

1 MS. PETRUCCELLI: July 10th.

2 MS. MESSIER: I'm sorry?

3 MS. PETRUCCELLI: July 10th.

4 MS. MESSIER: July 10th, that there was a discussion
5 about whether or not she could file -- my sister could file
6 the motion. In fact, if her claim is that she would have
7 filed it otherwise, then I should have received it on July
8 3rd if she would have received it and there could have been
9 a discussion about the timing of the motion at that time.
10 My recollection of that day is that we were standing before
11 Your Honor. It was purely on a procedural what's in the
12 file, do I have everything that I need, are all the
13 exhibits properly checked and then that's what the
14 conversation was on that date. Because, certainly at that
15 point, I would have objected to the motion for fees not
16 being properly served at that point.

17 As you can see from my opposition, Your Honor, I have
18 three main arguments in opposition to the fee. The first
19 is that it's untimely. Now what my sister is trying to do
20 here is to seek post-judgment relief. She has acknowledged
21 that she filed a request for fees in her answer. She,
22 again, brought up fees in her pretrial memo. The Court was
23 aware of my sister's request for fees and certainly could
24 have acted on that request for fees when entering the

1 judgment at that time, knowing that that's what she was
2 seeking.

3 As a secondary issue, her request for fees is grounded
4 in 208, Section 38, which applies to fees during ongoing --
5 during an ongoing court case, and this is clearly post-
6 judgment relief that she's seeking today. Had she filed --
7 even had she filed under 231, 6(f) for post-judgment
8 attorney's fees, I still think she would have a flawed
9 argument, which brings me to the section -- to my second
10 argument, which is that this is not by its nature a
11 frivolous claim. The Alimony Reform Act specifically
12 allows -- specifically states that there is a kick -- I'm
13 sorry, a substantial change in circumstance toward the
14 filing of a complaint for modification when alimony exceeds
15 the durational limit. It's grounded there. It's clear as
16 day. I don't see how a Court could find that to be
17 frivolous when the Alimony Act specifically allows it.

18 In regards to my sister's argument about whether or
19 not this is premature or not premature, in the judgment
20 that the Court issued there is specific mention of the
21 footnote in Holmes that specifically allows you to bring a
22 case prior to the durational limits. The Court
23 acknowledged that the Holmes footnote existed. The Court,
24 I believe, printed the text of the Holmes footnote decision

1 in there, and I think that that -- I think we were -- we
2 already went over the durational limits, that that's
3 already been addressed by the Court. I don't think we
4 should get to re-argue that right now.

5 The third piece of my argument has to do with timing
6 as well. Just my client has filed a notice of appeal. He
7 filed a timely notice of appeal. I believe that as --
8 because he's filed his notice of appeal and because the
9 case now rests in the hands of the Appellate Court, that
10 this Court has lost jurisdiction over the fees argument,
11 over the fees generally, because the issue for which she's
12 seeking fees is so comingled with the issue that we're here
13 today. It all has to do with the award of alimony. I
14 think it would be premature for this Court to order fees on
15 this issue when it's properly before the Appellate Court
16 right now.

17 THE COURT: Has the appeal been docketed in the
18 Appeals Court?

19 MS. MESSIER: The appeal has been docketed in the
20 Appellate Court. Right now -- I spoke with the appellate
21 attorney yesterday, so I could give you a proper answer on
22 this question. The -- downstairs they're assembling the
23 record. His appellate attorney has made a second request
24 on the assemblage of the record. I expect that to be done

1 imminently given that the case was done on -- you know, on
2 memorandums instead of a long trial. I expect that to be
3 complete soon.

4 THE COURT: All right. I will consider what you have
5 told me and what you have submitted in writing and you'll
6 get the decision.

7 MS. MESSIER: Thank you, Your Honor.

8 MS. PETRUCCELLI: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 (Recording ends at 9:42 a.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

CERTIFICATE

I, Linda Lee, A Certified Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the court proceedings in the above-titled matter.

I, Linda Lee, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of this action.

Proceedings recorded by electronic sound recording equipment. Transcripts produced from computer.

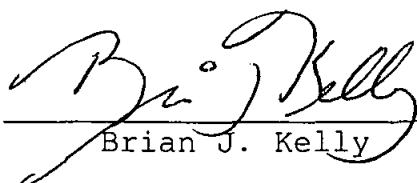
/S/ Linda Lee Cozzens, CVR

04/02/2015

Lee & Associates Certified Court Reporters
LeeScribe Transcription Services
439 Washington Street, 2nd Floor
Braintree, MA 02184
(781) 848-9693
leeassocreporters.com

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to, Mass. R. App. P. 16(a) (6) (pertinent findings or memorandum of decision); Mass. R. App. P. 16(e) (references to the record); Mass. R. App. P. 16 (f) (reproduction of statutes, rules, regulations); Mass. R. App. P. 16 (h) (length of briefs); Mass. R. App. P. 18 (appendix to the briefs); and, Mass. R. App. P. 20 (form of briefs, appendices, and other papers).



Brian J. Kelly

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

SUFFOLK, SS

NO. 2015-P-0593

CLIFFORD E. GEORGE
Plaintiff/Appellant

V.

JACQUELYN A. GEORGE
Defendant/Appellee

ON APPEAL FROM THE SUFFOLK PROBATE COURT

BRIEF AND RECORD APPENDIX
OF THE PLAINTIFF-APPELLANT
CLIFFORD E. GEORGE
and

December 9, 2014 Hearing Transcript

Brian J. Kelly
BBO#559594
Kelly & Associates, P.C.
21 McGrath Highway
Suite 206
Quincy, MA 02169
Tel: (617) 770-0005
bkelly@kellyappellatelaw.com